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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0458; Project Identifier AD–2021–00633–T; Amendment 39–22494; AD 2023–13–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This AD was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches. This AD requires repetitive inspections for immersion of each limit switch and position transmitter module (LSPTM) and of the LSPTM electrical wiring, repetitive inspections for blockage of the drain holes and cleaning of each drain hole, repetitive inspections for loose or cracked leveling compound, and applicable on-condition actions. For certain airplanes, this AD also requires installing two new drain holes, performing repetitive inspections for blockage of the drain holes and cleaning each drain hole, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 24, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0458; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0458.

FOR FURTHER INFORMATION CONTACT:

Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsuji@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767 airplanes. The NPRM published in the **Federal Register** on April 25, 2022 (87 FR 24276). The NPRM was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches, as a result of blocked drain holes in the area aft of body station (STA) 1725.5, which caused water to accumulate and eventually submerge the three LSPTMs, affecting their function. In the NPRM, the FAA proposed to require repetitive inspections for immersion of each LSPTM and of the LSPTM electrical wiring, repetitive inspections for blockage of the drain holes and cleaning of each drain hole, repetitive inspections for loose or cracked leveling compound, and applicable on-condition actions. For certain airplanes, the FAA proposed to also require installing two new drain holes, performing repetitive inspections for blockage of the drain holes and cleaning each drain hole, and applicable on-condition actions. The FAA is issuing this AD to address collected water or ice that could damage the LSPTMs and cause stabilizer trim position sensors to generate corrupt or erroneous signals to the flight crew. This condition, if not addressed, could result in misleading or confusing flight deck indications, a high speed overrun during takeoff, or a low altitude stall immediately after takeoff.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA), United Airlines, and an individual who supported the NPRM without change.

The FAA received additional comments from four commenters, including UPS, FedEx, Delta Air Lines (Delta), and Aviation Partners Boeing (APB). The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

APB stated that the installation of winglets per Supplemental Type Certificate (STC) ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

Request To Revise Inspection Interval

FedEx requested that the repetitive interval for the inspections specified in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, be revised from 90 days to 225 days. FedEx noted that, in anticipation of an AD, it had begun inspecting all Model 767–300F aircraft at 90 day intervals, but could not maintain that schedule, and even a 120 day inspection interval was challenging to comply with. FedEx added that, during those initial inspections, it found only one aircraft with a clogged drain hole and no evidence of water pooling, damaged leveling compound, or damaged

LSPTMs in its fleet. Based on those findings, FedEx stated that it had revised its inspection intervals to 450 flight cycles (the equivalent of 225 days). FedEx noted that if the FAA mandates a 90 day repetitive interval, it will be forced to ground aircraft. FedEx concluded that a 225 day inspection interval would eliminate undue burden on operators while maintaining an acceptable level of safety.

The FAA partially agrees with the commenter's request. Based on the FAA's risk assessment, the FAA has determined that a 225 day interval, which equates to approximately 3 inspections during the 24 month interval before the new drain holes must be added, is not adequate to address the unsafe condition because the inspections would not be frequent enough. However, the FAA has determined that extending the interval to 150 days, which equates to approximately 5 inspections during the 24 month interval before the new drain holes must be added, provides an adequate level of safety. The FAA has added paragraph (h)(4) of this AD to specify the 150 day inspection interval.

Request To Clarify Exception Language

Delta requested that paragraph (h)(3) of the proposed AD be revised to clarify the intent. Delta claimed the wording is very confusing and initially lead it to believe that both service bulletins, Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, and Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, must be accomplished in 90 days. Delta added that it understands the intent of paragraph (h)(3) of the proposed AD is to address a discrepancy where Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, Action 1, gives a compliance time of 24 months to do Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, which in turn has an initial compliance time of 90 days. Delta suggested that paragraph (h)(3) could be clarified to specify the compliance times for each referenced bulletin.

The FAA agrees with the commenter's request. The FAA has revised paragraph (h)(3) of this AD to clarify that although Action 1 in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, specifies to accomplish the actions in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, within 24 months after the date of issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 24 months after the original issue date of Boeing Alert Requirements Bulletin 767–27A0243 RB, whichever occurs later; Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, contains the applicable compliance times for accomplishing the actions specified in Action1. The applicable compliance times for all other actions in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, is at the times specified in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, except as specified in paragraph (h)(1) of this AD.

Request To Delay AD Issuance Until Parts Are Available

FedEx requested that the FAA delay issuance of a final rule until parts are available from Boeing. FedEx noted that it is planning to modify its aircraft as soon as possible, which would allow it to stop the repetitive inspections. However, FedEx stated that it has been trying unsuccessfully to order the necessary parts from Boeing since August, 2021. FedEx added that it was told the delivery schedule was ''to be determined,'' causing it to miss many scheduled aircraft checks.

The FAA disagrees with the commenter's request. The FAA notes that this AD requires repetitive inspections until the terminating modification is accomplished, so delaying issuance of this AD would also delay those vital inspections. Additionally, the FAA has confirmed with the manufacturer that adequate parts will be available to comply with this AD in the required compliance time. This AD has not been changed regarding this issue.

Request To Revise Certain Notes

FedEx requested that the FAA revise Note 1 to paragraph (g)(1) and Note 2 to paragraph (g)(2). FedEx requested revised wording to ensure that the new AD would not require the service information referenced in those notes.

The FAA agrees to clarify. The wording in the notes is intended to inform operators that the service information specified contains additional guidance for accomplishing the required actions. The service information referenced in the notes is not mandated by this AD, and operators are not required to use it. This AD has not been changed regarding this issue.

Request To Allow Skipping Close Access in Certain Situations

Delta requested that the proposed AD be revised to allow operators to skip certain close access steps. Delta stated that certain conditions in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021; and Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, include reference to close access or open access steps. Delta added that, based on how an operator would perform the steps, it doesn't make sense to close access when finishing the actions in one table, only to have to open access to begin work on the actions in the next table. Delta noted that some close access steps in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, include a flagnote allowing operators to skip the close access steps if additional work is required. Delta concluded that the flagnote should have been included for close access steps throughout Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021; and Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021.

The FAA agrees to clarify. The close access steps are not listed in the ''Action'' or ''Method of Compliance'' columns in the referenced service information. Instead, the close access steps are in a ''Refer to'' column, which is for reference only; the procedures within that column are not required by this AD and are for guidance only. Therefore, operators may deviate from those steps using accepted procedures. Acceptable deviations include not performing close access steps until all applicable actions are completed. This AD has not been changed regarding this issue.

Request To Not Require Certain Actions

UPS requested that the proposed AD be revised to not require the actions specified in paragraph (g)(2) of the proposed AD. UPS stated that it understands that accomplishment of the repetitive inspections at the shorter interval specified in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, is an acceptable means to detect and prevent the accumulation of water and ice in the area of the LSPTMs. UPS suggested that these frequent inspections provide an equivalent level of safety as adding new drain holes and inspections with a longer inspection interval. Therefore, UPS requested that the actions in paragraph (g)(2) of the proposed AD be made optional and terminate the actions in paragraph (g)(1) of the proposed AD if accomplished.

The FAA disagrees with the commenter's request. The addition of the two drain holes will create a configuration where multiple unique blockage events must occur before the accumulation of water or ice can

happen. The FAA has therefore determined that the addition of drain holes, combined with the repetitive inspections, cleaning, and on-condition actions, is the best method to address the unsafe condition. However, under the provisions specified in paragraph (i) of this AD, the FAA will consider requests for alternative methods of compliance (AMOCs). This AD has not been changed regarding this issue.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, which specifies procedures for repetitive general visual inspections (GVIs) for immersion in water or ice of each LSPTM and of the LSPTM electrical wiring, repetitive GVIs for blockage of the three drain holes and cleaning of each drain hole, repetitive GVIs for loose or cracked leveling compound, and applicable on-condition actions. On-condition actions include removing any water or ice, doing a detailed inspection for damage (corrosion or water damage) of any immersed LSPTM or LSPTM electrical wiring, installing a serviceable LSPTM, repairing or replacing any damaged LSPTM electrical wiring, clearing any drain hole blockages, and repairing any loose or cracked leveling compound.

The FAA also reviewed Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021. This service information specifies procedures for installing two new drain holes, performing repetitive GVIs for blockage of the five drain holes and cleaning each drain hole, and applicable on-condition actions. On-condition actions include clearing any drain hole blockages.

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

Costs of Compliance

The FAA estimates that this AD affects 613 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Drill drain holes	5 work-hours × $85 per hour = $425	$2,770	$3,195	Up to $1,958,535.
Repetitive GVI and cleaning of 5 drain holes.	2 work-hours × $85 per hour = $170 per inspection cycle.	0	$170 per inspection cycle.	Up to $104,210 per inspection cycle.
Repetitive GVI of LSPTM	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$52,105 per inspection cycle.
Repetitive GVI of LSPTM electrical wiring	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$52,105 per inspection cycle.
Repetitive GVI and cleaning of 3 drain holes.	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$52,105 per inspection cycle.
Repetitive GVI of leveling compound	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$52,105 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed inspection of LSPTM or LSPTM electrical wiring.	1 work-hour × $85 per hour = $85	$0	$85

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–13–09 The Boeing Company: Amendment 39–22494; Docket No. FAA–2022–0458; Project Identifier AD–2021–00633–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300F, –400ER, and –2C series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls;

(e) Unsafe Condition

This AD was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches; an investigation found that certain drain holes were blocked, causing water and ice to collect and subsequently cover the limit switch and position transmitter modules (LSPTMs), which affected their function. The FAA is issuing this AD to address collected water or ice that could damage the LSPTMs and cause stabilizer trim position sensors to generate corrupt or erroneous signals to the flight crew. This condition, if not addressed, could result in misleading or confusing flight deck indications, a high speed overrun during takeoff, or a low altitude stall immediately after takeoff.

(f) Compliance

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

(g) Required Actions

(1) For all Model 767–200, –300, –300F, –400ER airplanes: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767–27A0240, dated January 19, 2021, which is referred to in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021.

(2) For Model 767–200, –300, –300F, and –400ER airplanes, as identified in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021. Accomplishing the installation of two new drain holes required by this paragraph terminates the repetitive inspections of the drain holes required by paragraph (g)(1) of this AD.

Note 2 to paragraph (g)(2): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767–27A0243, dated May 28, 2021, which is referred to in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021.

(3) For Model 767–2C airplanes: Within 90 days after the effective date of this AD, inspect the LSPTMs, LSPTM electrical wiring, drain holes, and leveling compound; install two new drain holes as applicable; and do applicable on-condition actions in accordance with a method approved by the Manager, AIR–520 Continued Operational Safety Branch, FAA.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, uses the phrase ''the original issue date of the Requirements Bulletin 767–27A0243 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, uses the phrase ''the original issue date of the Requirements Bulletin 767–27A0240 RB,'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, specifies a compliance time for Action 1 (accomplishment of Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021), for this AD the compliance times for accomplishing the actions in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, are as specified in paragraph (g)(1) of this AD.

(4) Where the ''Repeat Interval (Not to Exceed)'' column of the Compliance tables in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, specifies ''90 days,'' this AD requires using ''150 days.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520 Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Additional Information

(1) For more information about this AD, contact Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsuji@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(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) Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021.

(ii) Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600;

telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on June 28, 2023.

Michael Linegang,

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

[FR Doc. 2023–15305 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0659; Project Identifier AD–2022–01404–T; Amendment 39–22508; AD 2023–14–08]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII–G600 airplanes. This AD was prompted by an addition of a life limit in the Airworthiness Limitations Section (ALS) for GVII–G600 flap yokes. The life limit for the GVII–G600 flap yokes was informed by a GVII–G500 flap yoke failure that occurred during flight testing and, ultimately, resulted in additional test and analysis to establish more accurate life limits reflective of each model's design features and stress levels. The FAA is issuing this AD to require revising the existing ALS to prevent the GVII–G600 inboard flap yoke from remaining in service beyond its life limit. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0659; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Johnson, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; email: *9-ASO-ATLACO-ADs@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace Corporation Model GVII–G600 airplanes. The NPRM published in the **Federal Register** on April 6, 2023 (88 FR 20436). The NPRM was prompted by an addition of a life limit in the ALS for GVII–G600 inboard flap actuator yoke fittings. Gulfstream revised the ALS to establish a life limit of 4,000 flight cycles. The FAA is issuing this AD to address decreased fatigue life of GVII–G600 inboard flap actuator yoke fittings and to prevent the GVII–G600 flap yoke from remaining in service beyond its life limit. An inboard flap actuator yoke fitting remaining in service beyond its life limit could result in the flaps being jammed in position, if fracture occurred. Additional failures in the flap actuator force limiter, or flap yoke actuator disconnect, could result in asymmetric flap positions leading to a loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Gulfstream Aerospace Corporation. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify the Summary Section

Gulfstream Aerospace Corporation states the summary statement does not accurately describe the condition or reason for this AD as the flap yoke fittings installed on GVII–G500 are not installed on any GVII–G600 aircraft. Gulfstream has added a limitation to the GVII–G600 ALS based on a reevaluation of the damage tolerance analysis considering the GVII–G500 flap yoke fitting failure. The shaft diameters on both the inboard and outboard GVII–G600 flap yoke fittings are larger than the corresponding GVII–G500 configurations, and the operational stresses are lower.

The FAA agrees with adopting Gulfstream's recommended language for the Summary with two exceptions. The FAA will continue to reference the unsafe condition because it follows previous NPRM language for ALS revisions when establishing life limits. The FAA will also continue to reference the GVII–G500 failure as the life limit for the GVII–G600 flap yokes was informed by the GVII–G500 flap yoke failure that occurred during flight testing and resulted in additional test and analysis to establish more accurate life limits reflective of each model's design features and stress levels.

Request To Clarify the Background Section

Gulfstream Aerospace Corporation states there is no design flaw on the GVII–G600 flap yoke. The flap yoke fittings installed on GVII–G500 have a different design. A damage tolerance analysis was performed on the GVII–G600 inboard yoke fittings and determined that a life limit was necessary to protect the integrity of the flap actuation system. Gulfstream has requested the Background be changed to clarify this section.

The FAA agrees with Gulfstream and has revised the Background section accordingly. While the GVII–G600 does have design features known to reduce fatigue life, the use of the term 'design flaw' should not be applied to the GVII–G600 flap yoke fittings.

Request To Clarify Paragraph (e) Unsafe Condition

Gulfstream Aerospace Corporation states the GVII–G600 design is much more robust than the GVII–G500 design, and there is no design flaw with the GVII–G600 flap yoke. Through analysis, Gulfstream determined a life limit was needed to address all threats required under 14 CFR 25.571(a) and (b), including fatigue, corrosion, and accidental damage. Gulfstream acknowledges this AD is necessary to notify operators of a revision to the G600 ALS to incorporate life limits for the inboard flap actuator yoke fittings. Gulfstream requested a change to the unsafe paragraph to clarify the reason for this AD.

The FAA agrees to revise the language in paragraph (e) to remove reference to the GVII–G500 investigation as a need to establish a life limit. While the GVII–G500 flap yoke fitting failure incident did inform the fatigue effects, the FAA

understands the GVII–G600 has unique design features and operating stress levels. The FAA disagrees with removal of the reference to the term ''unsafe condition'' from this section since all ADs are issued to address unsafe conditions in accordance with 14 CFR 39.5.

Conclusion

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

Costs of Compliance

The FAA estimates that this AD affects 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS	1 work-hour × $85 per hour = $85	N/A	$85	$3,485

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–14–08 Gulfstream Aerospace Corporation: Amendment 39–22508; Docket No. FAA–2023–0659; Project Identifier AD–2022–01404–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVII–G600 airplanes, certificated in any category, serial numbers 73001 through 73051 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by an addition of a life limit in the Airworthiness Limitations Section (ALS) for GVII–G600 inboard flap actuator yoke fittings. The FAA is issuing this AD to address decreased fatigue life of GVII–G600 inboard flap actuator yoke fittings and to prevent the GVII–G600 flap yoke from remaining in service beyond its life limit. The unsafe condition, if not addressed, could result in the flaps being jammed in position, if fracture occurred. Additional failures in the flap actuator force limiter, or flap yoke actuator disconnect, could result in asymmetric flap positions leading to a loss of control of the airplane.

(f) Compliance

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

(g) Incorporation of ALS Revisions

Within 30 days after the effective date of this AD, revise the existing ALS of the Instructions for Continued Airworthiness (ICA) or inspection program for your airplane by establishing a life limit of 4,000 flight cycles for the left-hand part number (P/N) 73P5755033M005 and right-hand P/N 73P5755033M006 inboard flap yoke fittings.

Note 1 to paragraph (g): The life limit in paragraph (g) of this AD is contained in table 2 in Section 05–10–10 of Gulfstream GVII–G600 Aircraft Maintenance Manual, Revision 9, dated November 15, 2022.

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(i) Related Information

(1) For more information about this AD, contact Jeffrey Johnson, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; email: *9-ASO-ATLACO-ADs@faa.gov.*

(2) For Gulfstream service information identified in this AD that is not incorporated by reference, contact Gulfstream Aerospace Corporation, Technical Publications Dept.,

P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email *pubs@gulfstream.com;* website *gulfstream.com/en/customer-support/.* 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.

(j) Material Incorporated by Reference

None.

Issued on July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15255 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0432; Project Identifier AD–2022–01384–T; Amendment 39–22457; AD 2023–11–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–8 and 747–8F series airplanes. This AD was prompted by reports of cracks in stringers, common to the end fittings, forward and aft of the pressure bulkhead at station (STA) 2360 at multiple stringer locations. This AD requires repetitive inspections of stringer sidewalls and certain stringer assemblies, common to the end fittings, forward and aft of the pressure bulkhead at STA 2360 for any crack, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 24, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 24, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0432; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0432.

FOR FURTHER INFORMATION CONTACT: Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 206–231–3964; email: *stefanie.n.roesli@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 747–8 and 747–8F series airplanes. The NPRM published in the **Federal Register** on April 6, 2023 (88 FR 20431). The NPRM was prompted by reports of cracks in the stringers, common to the end fittings, forward and aft of the pressure bulkhead at STA 2360. An investigation found that during airplane assembly, un-shimmed or incorrectly shimmed gaps, which were larger than engineering requirements, caused excessive and sustained internal tensile stresses and resulted in stress corrosion cracking in the stringers. In the NPRM, the FAA proposed to require repetitive inspections of stringer sidewalls and certain stringer assemblies, common to the end fittings, forward and aft of the pressure bulkhead at STA 2360 for any crack, and applicable on-condition actions. This condition, if not addressed, could result in an undetected crack in the stringers, resulting in the inability of a structural element to sustain limit load which could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Boeing and an individual who supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022. This service information specifies procedures for repetitive low frequency eddy current (LFEC) and high frequency eddy current (HFEC) inspections of the stringer sidewalls; repetitive detailed inspections of certain stringer assemblies; and applicable on-condition actions. On-condition actions include repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 44 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of stringers	Up to 110 work-hours × $85 per hour = Up to $9,350 per inspection cycle.	$0	Up to $9,350 per inspection cycle.	Up to $411,400 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair of a cracked stringer	13 work-hours × $85 per hour = $1,105	$600	$1,705

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–11–11 The Boeing Company: Amendment 39–22457; Docket No. FAA–2023–0432; Project Identifier AD–2022–01384–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–8 and 747–8F series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the stringers, common to the end fittings, forward and aft of the pressure bulkhead at station (STA) 2360 at multiple stringer locations. The FAA is issuing this AD to address an undetected crack in the stringers. The unsafe condition, if not addressed, could result in the inability of a structural element to sustain limit load which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2910, dated September 21, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022, use the phrase ''the original issue date of Requirements Bulletin 747–53A2910 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520 Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 206–231–3964; email: *stefanie.n.roesli@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(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) Boeing Alert Requirements Bulletin 747–53A2910 RB, dated September 21, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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, *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 7, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–15297 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0673; Airspace Docket No. 23–ANE–03]

RIN 2120–AA66

Amendment of Class E Airspace; Greenville, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Greenville Municipal Airport, Greenville, ME, as a new instrument approach procedure has been designed for this airport. This action also updates the airport's existing extension.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval helps, and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

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 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 amends Class E airspace for Greenville Municipal Airport, Greenville, ME, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0673 in the **Federal Register** (88 FR 29849; May 9, 2023), proposing to amend Class E airspace at Greenville Municipal Airport, Greenville, ME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Greenville Municipal Airport, Greenville, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This action amends the existing bearing from the airport to 297° (previously 320°), as well as establishing an extension to the south of the airport to accommodate the new approach procedure. This amendment supports a new instrument procedure for this airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant

environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Greenville, ME [Amended]

Greenville Municipal Airport, ME
(Lat 45°27′46″ N, long 69°33′06″ W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Greenville Municipal Airport, within 3 miles on each side of the 297° bearing of the airport extending from the 9.4-mile radius to 17 miles northwest of the airport, and within 2 miles each side of the 117° bearing of the airport, extending from the 9.4-mile radius to 14 miles southeast of the airport.

* * * * *

Issued in College Park, Georgia, on July 13, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–15220 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1798; Airspace Docket No. 22–AAL–32]

RIN 2120–AA66

Revocation of Colored Federal Airway Blue 2 (B–2); Point Lay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Colored Federal airway Blue 2 (B–2) in the vicinity of Point Lay, AK due to the pending decommissioning of the Point Lay (PIZ) Non-directional Beacon (NDB), Hotham NDB (HHM), and Fort Davis NDB (FDV) in Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–1798 in the **Federal Register** (88 FR 2561; January 17, 2023), proposing to revoke Colored Federal airway B–2 in the vicinity of Point Lay, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Colored Federal airways are published in paragraph 6009 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 amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Colored Federal airway B–2 in the vicinity of Pont Lay, AK due to the scheduled decommissioning of the PIZ, HHM, and FDV NDBs. This action revokes B–2 in its entirety.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine

matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that the revocation of Colored Federal Airway B–2 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6009 Colored Federal Airways.

* * * * *

B–2 [Removed]

* * * * *

Issued in Washington, DC, on July 13, 2023.

Karen Chiodini,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15324 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0444; Airspace Docket No. 22–ASO–16]

RIN 2120–AA66

Amendment of VOR Federal Airways V–71 and V–245, Revocation of VOR Federal Airways V–554 and V–570, and Establishment of United States Area Navigation (RNAV) Routes T–471, T–473, and T–474 in the Vicinity of Natchez, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–71 and V–245, revokes VOR Federal airways V–554 and V–570, and establishes United States Area Navigation (RNAV) routes T–471, T–473, and T–474. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Natchez, MS (HEZ), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Natchez VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0444 in the **Federal Register** (88 FR 12872; March 1, 2023), proposing to amend VOR Federal airways V–71 and V–245, revoke VOR Federal airways V–554 and V–570, and establish RNAV routes T–471, T–473, and T–474 due to the planned decommissioning of the VOR portion of the Natchez, MS, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 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 amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the ADDRESSES section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–71 and V–245, revoking VOR Federal airways V–554 and V–570, and establishing RNAV routes T–471, T–473, and T–474. The ATS route amendments, revocations, and establishments are due to the planned decommissioning of the VOR portion of the Natchez, MS, VOR/DME. The ATS route actions are described below.

V–71: V–71 extends between the Fighting Tiger, LA, VOR/Tactical Air Navigation (VORTAC) and the Topeka, KS, VORTAC; between the Lincoln, NE, VORTAC and the O'Neill, NE, VORTAC; and between the Pierre, SD, VORTAC and the Williston, ND, VOR/DME. The airway segment overlying the Natchez, MS, VOR/DME between the Fighting Tiger VORTAC and the Monroe, LA, VORTAC is removed. As amended, the airway extends between the Monroe VORTAC and the Topeka VORTAC, between the Lincoln VORTAC and the O'Neill VORTAC, and between the Pierre VORTAC and the Williston VOR/DME.

V–245: V–245 extends between the Alexandria, LA, VORTAC and the Bigbee, MS, VORTAC. The airway segment overlying the Natchez, MS, VOR/DME between the Alexandria VORTAC and the Magnolia, MS, VORTAC is removed. As amended, the airway extends between the Magnolia VORTAC and the Bigbee VORTAC.

V–554: V–554 is removed in its entirety.

V–570: V–570 is removed in its entirety.

T–471: T–471 is established between the RCOLA, LA, waypoint (WP), located near the Fighting Tiger, LA, VORTAC, and the Monroe, LA, VORTAC. This new RNAV T-route mitigates the removal of the V–71 airway segment between the Fighting Tiger VORTAC and the Monroe VORTAC; providing RNAV routing from the Baton Rouge, LA, area northwestward to the Monroe, LA, area. The full T–471 route description is listed in the amendments to part 71 as set forth below.

T–473: T–473 is established between the ICEKI, MS, WP and the Monroe, LA, VORTAC. This new RNAV T-route mitigates the removal of V–570 between the Mc Comb VORTAC and the Natchez VOR/DME and the removal of V–554 between the Natchez VOR/DME and Monroe VORTAC; providing RNAV routing from the McComb, MS, area northwestward to the Monroe, LA, area. The full T–473 route description is listed in the amendments to part 71 as set forth below.

T–474: T–474 is established between the Alexandria, LA, VORTAC and the Magnolia, MS, VORTAC. This new RNAV T-route mitigates the removal of the V–245 airway segment between the Alexandria VORTAC and the Magnolia VORTAC; providing RNAV routing from the Alexandria, LA, area northeastward to the Magnolia, MS, area. The full T–474 route description is listed in the amendments to part 71 as set forth below.

All NAVAID radials listed in the V–71 description in the Amendment section below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–71 and V–245, revoking VOR Federal airways V–554 and V–570, and establishing RNAV routes T–471, T–473, and T–474, due to the planned decommissioning of the VOR portion of the Natchez, MS, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); paragraph 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima; and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, 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–71 [Amended]

From Monroe, LA; El Dorado, AR; Hot Springs, AR; INT Hot Springs 358° and Harrison, AR, 176° radials; Harrison; Springfield, MO; Butler, MO; to Topeka, KS. From Lincoln, NE; Columbus, NE; to O'Neill, NE. From Pierre, SD; Bismarck, ND; to Williston, ND.

* * * * *

V–245 [Amended]

From Magnolia, MS; to Bigbee, MS.

* * * * *

V–554 [Removed]

* * * * *

V–570 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–471 RCOLA, LA to Monroe, LA (MLU) [New]

RCOLA, LA	WP	(Lat. 30°29′06.52″ N, long. 091°17′37.96″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
Monroe, LA (MLU)	VORTAC	(Lat. 32°31′00.77″ N, long. 092°02′09.65″ W)

* * * * * * *

T–473 ICEKI, MS to Monroe, LA (MLU) [New]

ICEKI, MS	WP	(Lat. 31°18′16.12″ N, long. 090°15′28.85″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
TULLO, LA	WP	(Lat. 31°58′47.77″ N, long. 091°48′24.56″ W)
Monroe, LA (MLU)	VORTAC	(Lat. 32°31′00.77″ N, long. 092°02′09.65″ W)

* * * * * * *

T–474 Alexandria, LA (AEX) to Magnolia, MS (MHZ) [New]

Alexandria, LA (AEX)	VORTAC	(Lat. 31°15′24.23″ N, long. 092°30′03.50″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
Magnolia, MS (MHZ)	VORTAC	(Lat. 32°26′02.65″ N, long. 090°05′59.18″ W)

* * * * *

Issued in Washington, DC, on July 13, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–15322 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0328; Airspace Docket No. 22–ASO–37]

RIN 2120–AA66

Revocation, Amendment, and Establishment of Air Traffic Service (ATS) Routes Due to the Decommissioning of the Greene County, MS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Jet Route J–590, amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–11 and V–70, and establishes United States Area Navigation (RNAV) route T–365. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Greene County, MS (GCV), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Greene County VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the ATS route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0328 in the **Federal Register** (88 FR 13737; March 6, 2023), proposing

to remove Jet Route J–590, amend VOR Federal airways V–11 and V–70, and establish RNAV route T–365 due to the planned decommissioning of the VOR portion of the Greene County, MS, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

Jet Routes are published in paragraph 2004, VOR Federal airways are published in paragraph 6010(a), and United States Area Navigation Routes (T-routes) are published in paragraph 6011 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 amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by removing Jet Route J–590, amending VOR Federal airways V–11 and V–70, and establishing RNAV route T–365 due to the planned decommissioning of the VOR portion of the Greene County, MS, VORTAC. The ATS route actions are described below.

J–590: J–590 is removed in its entirety.

V–11: V–11 extends between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC; and between the Cunningham, KY, VOR/Distance Measuring Equipment (VOR/DME) and the intersection of the Fort Wayne, IN, VORTAC 038° and Flag City, OH, VORTAC 308° radials (EDGEE fix). The airway segment overlying the Greene County VORTAC between the Brookley VORTAC and the Magnolia VORTAC is removed. As amended, the airway extends between the Cunningham VOR/DME and the intersection of the Fort Wayne VORTAC 038° and Flag City VORTAC 308° radials (EDGEE fix).

V–70: V–70 extends between the Monterrey, Mexico, VOR/DME and the Allendale, SC, VOR; and between the Grand Strand, SC, VORTAC and the Cofield, NC, VORTAC. The airspace within Mexico is excluded. The airway segment overlying the Greene County VORTAC between the Picayune, MS, VOR/DME and the Monroeville, AL, VORTAC is removed. As amended, the airway extends between the Monterrey, Mexico, VOR/DME and the Picayune VOR/DME, between the Monroeville VORTAC and the Allendale VOR, and between the Grand Strand VORTAC and the Cofield VORTAC.

T–365: T–365 is a new RNAV route that extends between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC. This T-route mitigates the loss of the V–11 airway segment removed and provides RNAV routing capability between the Mobile, AL, area northwestward to the Jackson, MS, area.

All NAVAID radials listed in the VOR Federal airway descriptions in the Amendment section below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of removing Jet Route J–590, amending VOR Federal airways V–11 and V–70, and establishing RNAV route T–365, due to the planned decommissioning of the VOR portion of the Greene County, MS, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); paragraph 5–6.5j, which categorically excludes from further environmental impact review implementation of procedures to respond to emergency air or ground safety needs, accidents, or natural events with no reasonably foreseeable long-term adverse impacts; and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–590 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–11 [Amended]

From Cunningham, KY; Pocket City, IN; Brickyard, IN; Marion, IN; Fort Wayne, IN; to

INT Fort Wayne 038° and Flag City, OH, 308° radials.

* * * * *

V–70 [Amended]

From Monterrey, Mexico; Brownsville, TX; INT Brownsville 338° and Corpus Christi, TX, 193° radials; 34 miles standard width, 37 miles 7 miles wide (4 miles E and 3 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; Palacios; Scholes, TX; Sabine Pass, TX; Lake Charles, LA; Lafayette, LA; Fighting Tiger, LA; to Picayune, MS. From Monroeville, AL; INT Monroeville 073° and Eufaula, AL, 258° radials; Eufaula; Vienna, GA; to Allendale, SC. From Grand Strand, SC; Wilmington, NC; Kinston, NC; INT Kinston 050° and Cofield, NC, 186° radials; to Cofield. The airspace within Mexico is excluded.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–365 Brookley, AL (BFM) to Magnolia, MS (MHZ) [New]

Brookley, AL (BFM)	VORTAC	(Lat. 30°36′45.80″ N, long. 088°03′19.78″ W)
GARTS, MS	WP	(Lat. 31°05′52.39″ N, long. 088°29′10.68″ W)
Magnolia, MS (MHZ)	VORTAC	(Lat. 32°26′02.65″ N, long. 090°05′59.18″ W)

* * * * *

Issued in Washington, DC, on July 13, 2023.

Karen L. Chiodini,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15312 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0266; Airspace Docket No. 19–AAL–56]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–388 in the Vicinity of Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) T-route T–388, in the vicinity of Port Heiden, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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 expands the availability of RNAV in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessoning the dependency on ground-based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0266 in the **Federal Register** (87 FR 16674; March 24, 2022), establishing RNAV T-route T–388, in the vicinity of Port Heiden, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There were no comments received.

Difference From the NPRM

The NPRM misidentified the BAILY, AK, point as a waypoint (WP) instead of a Fix. This rule corrects the error.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 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 amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV T-route T–388 in the vicinity of Port Heiden, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The new route is described below.

T–388: T–388 extends between the new WIXER, AK, WP, located over the Port Heiden, AK (PDN), Non-Directional Beacon (NDB), and the BAILY, AK, WP, located northwest of the Kodiak Airport, AK.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–388 in the vicinity of Port Heiden, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–388 WIXER, AK TO BAILY, AK [NEW]

WIXER, AK	WP	(Lat. 56°54′29.00″ N, long. 158°36′10.00″ W)
ZOPAB, AK	WP	(Lat. 57°09′28.12″ N, long. 157°48′14.87″ W)
HEBMI, AK	WP	(Lat. 57°24′13.13″ N, long. 156°51′24.77″ W)
ZEMIR, AK	WP	(Lat. 57°51′13.88″ N, long. 154°02′28.16″ W)
BAILY, AK	Fix	(Lat. 57°54′33.79″ N, long. 152°54′36.97″ W)

* * * * *

Issued in Washington, DC, on July 13, 2023.

Karen L. Chiodini,

Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15323 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Publication of Iranian Transactions and Sanctions Regulations Web General License P

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license (GL) issued pursuant to the Iranian Transactions and Sanctions Regulations and an Iran-related Executive order: GL P, which was previously made available on OFAC's website.

DATES: GL P was issued on June 2, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On June 2, 2023, OFAC issued GL P to authorize certain transactions otherwise prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, or Executive Order 13846 of August 6, 2018, ''Reimposing Certain Sanctions With Respect to Iran'' (83 FR 38939, August 7, 2018). GL P was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. GL P has an expiration date of July 6, 2023. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13846 of August 6, 2018

Reimposing Certain Sanctions With Respect to Iran

Iranian Transactions and Sanctions Regulations

31 CFR Part 560

GENERAL LICENSE P

Authorizing the Wind Down of Transactions Involving Navyan Abr Arvan Private Limited Company or Arvancloud Global Technologies L.L.C.

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of any transaction involving Navyan Abr Arvan Private Limited Company or Arvancloud Global Technologies L.L.C. that are prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), or Executive Order (E.O.) 13846 of August 6, 2018, are authorized through 12:01 a.m. eastern daylight time, July 6, 2023, provided that any payment to a blocked

person must be made into a blocked account in accordance with the ITSR.

(b) This general license does not authorize any transactions otherwise prohibited by the ITSR or E.O. 13846, including transactions involving any person blocked pursuant to the ITSR or E.O. 13846 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: June 2, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–15368 Filed 7–19–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0565]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Atlantic Ocean and the St. Johns River around the Motor Vessel (M/V) ZHENG HOU 28. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the transit of the heavy lift vessel through the St. John's River. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Jacksonville or designated representative.

DATES: This temporary interim rule is effective without actual notice from July 20, 2023, through 11:59 p.m. on May 31, 2024. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on July 16, 2023 July 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0565 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 Marine Science Technician First Class Anthony DeAngelo, Waterways Management division, U.S. Coast Guard; telephone 904–714–7631, email *Anthony.DeAngelo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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 interim 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 temporary interim rule because doing so would be impracticable. This safety zone must be established by July 16,2023, in order to protect vessels and waterway users from the potential hazards associated with the transit of a large vessel carrying oversized gantry cranes.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the public interest because immediate action is needed to ensure the protection of vessels and waterway users in during the transit of the vessel, and during the offload and installation of the cranes.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent temporary interim rule or temporary final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Jacksonville (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) ZHENG HOU 28, and during the offloading of its cargo, and their installation onto the port. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel is within the St. John's River.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:01 a.m. on July 16, 2023 until 11:59 p.m. on December 31, 2023. A moving and fixed temporary safety zone will be established for the vessel M/V ZHENG HOU 28. The moving safety zone will cover all navigable waters of the Atlantic Ocean and the St. Johns River within a 100-yard diameter of the vessel from the time the vessel passes the St. Johns River Sea Buoy, until the vessel is moored at Blount Island. The fixed safety zone will cover all navigable waters of the St. Johns River, within 25 yards of the vessel, while it is moored at Blount Island. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the vessel is within the limits of the St. John's River. 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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the safety zone is small, as it only covers a limited area of the St. John's River and Atlantic Ocean, immediately surrounding the vessel. Further the zone shrinks even further once the vessel is moored at Blount Island, FL. The duration of the zone is intended to ensure the safety of vessels through the duration of the vessel's inbound and

transit and offload. 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 moving temporary safety zone within 100-yard diameter safety zone of the vessel M/V ZHENG HOU 28 and a fixed temporary safety zone within 25 yards of the vessel, while it is moored at Blount Island. 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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0565 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this temporary interim rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this temporary interim rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the temporary interim rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the temporary interim rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0565 to read as follows:

§ 165.T07–0565 Transit of the M/V ZHENG HOU 28, St. John's River, FL.

(a) *Location.* The following areas are temporary safety zones:

(1) All waters of the Atlantic Ocean and the St. John's River, FL, from surface to bottom, that are within 100 yards when the vessel M/V ZHENG HOU 28 is transiting inbound from the St. Johns River Sea Buoy, until it is moored to Blount Island.

(2) All waters of the St. John's River, FL, from surface to bottom to within 25 yards of the vessel M/V ZHENG HOU 28, while the vessel is moored to Blount Island, FL.

(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 Jacksonville (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 Jacksonville by telephone at (904) 714–7557, or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on July 16, 2023 through 11:59 p.m., on December 31, 2023.

Dated: July 14, 2023.

J.D. Espino-Young,

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

[FR Doc. 2023–15444 Filed 7–17–23; 4:15 pm]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0104; FRL10907–03–R3]

Air Plan Approval; Virginia; Startup, Shutdown, and Malfunction Amendments to Facility and Control Equipment Maintenance or Malfunction Regulations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On June 22, 2023, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** approving revisions to the Commonwealth of Virginia state implementation plan (SIP). In that rule, the EPA inadvertently included erroneous amendatory instructions codifying the approved SIP amendment to be incorporated by reference (IBR) for Article 57: Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–57). This document corrects the errors in the final rule's amendatory instruction and table entry.

DATES: This correction is effective July 24, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0104. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5511. Mr. Silverman can also be reached via electronic mail at *silverman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: In our final rule published June 22, 2023 (88 FR 40715), effective July 24, 2023, the EPA inadvertently included errors in amendatory instructions that codified the approved SIP amendment to be incorporated by reference for Article 57: Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–57). The June 22, 2023 publication states that the entry ''8–40–8640'' is being added. The correct entry added should be ''5–40–8640.''

Correction

In FR Doc. 2023–13147, published at 88 FR 40715 in the **Federal Register** on Thursday June 22, 2023, the following corrections are made:

Subpart VV—Virginia

§ 52.2420 [Corrected]

■ 1. On page 40718, in the second column, in amendment 2.d. for § 52.2420, the instruction ''Adding the entry ''8–40–8640'' in numerical order under the heading ''Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4– 57)'' '' is corrected to read ''Adding the entry ''5–40–8640'' in numerical order under the heading ''Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4– 57)'' ''.

■ 2. On page 40719, in § 52.2420, paragraph (c) table, under the heading ''Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control

Area, 8-hour Ozone Standard (Rule 4–57)'', the entry is corrected to read as follows:

§ 52.2420 [Corrected]

(c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–57)				
*	*	*	*	*
5–40–8640	Facility and control equipment maintenance or malfunction.	2/1/2016	7/20/2023, [INSERT **FEDERAL REGISTER** CITATION].	Added.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–15226 Filed 7–19–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 230713–0165]

RIN 0648–BL56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendments 1

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 1 to the Puerto Rico Fishery Management Plan (FMP), Amendment 1 to the St. Croix FMP, and Amendment 1 to the St. Thomas and St. John FMP (jointly Amendments 1), as submitted by the Caribbean Fishery Management Council (Council). This final rule and Amendments 1 prohibit the use of buoy gear by the recreational sector in U.S. Caribbean Federal waters and modify the regulatory definition of buoy gear to increase the maximum number of allowable hooks used by the commercial sector in U.S. Caribbean Federal waters from 10 to 25. The purpose of this final rule and Amendments 1 is to allow commercial fishermen targeting deep-water fish, including snappers and groupers, in the U.S. Caribbean Federal waters to use buoy gear with up to 25 hooks, while protecting deep-water reef fish resources and habitats and minimizing user conflicts.

DATES: This final rule is effective August 21, 2023.

ADDRESSES: Electronic copies of Amendments 1, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/generic-amendment-1-island-based-fishery-management-plans-modification-buoy-gear-definition.*

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, telephone: 727–824–5305, or email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage reef fish and pelagic stocks and stock complexes in the U.S. Caribbean Exclusive Economic Zone (EEZ) under the Puerto Rico FMP, St. Croix FMP, and St. Thomas and St. John FMP (collectively the island-based FMPs). The Council prepared the island-based FMPs and NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 6, 2023, NMFS published a notice of availability for Amendments 1 and requested public comment (88 FR 20453). NMFS approved Amendments 1 on July 3, 2023. On April 24, 2023, NMFS published a proposed rule for Amendments 1 and requested public comment (88 FR 24746). The proposed rule and Amendments 1 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendments 1 and implemented by this final rule is described below.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable. The Magnuson-Stevens Act also authorizes the Council and NMFS to regulate fishing activity to support the conservation and management of fisheries, which may include regulations that pertain to fishing for non-managed species.

On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. For Puerto Rico and the U.S. Virgin Islands (USVI), the Council and NMFS manage fisheries under the island-based FMPs. NMFS published the final rule to implement the island-based FMPs on September 13, 2022 (87 FR 56204). The island-based FMPs contain management measures applicable for Federal waters off each respective island group. Among other measures, for reef fish and pelagic species managed in each island management area, these include allowable fishing gear and methods for harvest. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ. Federal regulations at 50 CFR 600.725(v), in section (V) of the table, describe the authorized fishing gear for each of the Council-managed fisheries and non-

managed fisheries in each island management area.

In the U.S. Caribbean, small-scale commercial fishermen harvesting deep-water reef fish, particularly snappers (*e.g.,* queen and cardinal snappers) and groupers, typically use a specific type of hook-and-line gear. This hook-and-line gear is known locally as vertical bottom line or ''cala'' in Puerto Rico and as vertical setline or deep-drop gear in the USVI. Fishing gear configurations and methods used by commercial fisherman to harvest these deep-water snappers and groupers, which includes buoy gear, varies in terms of vessel fishing equipment and materials used, hook type, size and number, number of lines used, types of bait, soaking time, and fishing grounds. Vertical bottom line fishing gear and deep-drop fishing gear can be either attached to the vessel while deployed and retrieved with an electrical reel or unattached to the vessel when rigged and deployed as buoy gear and retrieved with an electrical reel. Buoy gear, known as or ''cala con boya'' in Puerto Rico and as deep-drop buoy gear in the USVI, is typically used to harvest deep-water snappers and groupers in waters up to 1,500 ft (457 m), by commercial fishermen in Puerto Rico and to a lesser extent in the USVI.

Buoy gear is defined in 50 CFR 622.2 as fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). This current definition of buoy gear applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean. In addition, buoy gear is listed as an authorized hook-and-line gear type in 50 CFR 600.725(v)(V) for those fishing commercially and recreationally for species that are not managed by the Council (*i.e.,* non-FMP species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John and for those fishing commercially for managed reef fish and managed pelagic species in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. As described in Amendments 1, although buoy gear is currently listed as an authorized gear for recreational fishing of species that are not managed under the island-based FMPs, there is no evidence that the recreational sector operating in U.S. Caribbean Federal waters uses or has used buoy gear. Use of buoy gear by the recreational sector is unlikely because it is a very specialized commercial gear type that is expensive and difficult to use by anyone other than a professional commercial fisherman.

In December 2021, commercial fishermen who target deep-water snapper and grouper in Federal waters around Puerto Rico and the USVI commented to the Council that they would like to increase the maximum number of hooks that are allowed while using buoy gear in Federal waters to reflect how the gear is currently used in state waters in both Puerto Rico and the USVI. Under the current definition of buoy gear that applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean, no more than 10 hooks may be connected between the buoy and the terminal end. Puerto Rico and USVI territorial regulations, on the other hand, do not limit the number of hooks allowed on deep-water reef fish buoy gear.

In this final rule and Amendments 1, the use of buoy gear in U.S. Caribbean Federal waters will be limited to those fishing commercially and will be prohibited by those fishing recreationally. Prohibiting the use of buoy gear by the recreational sector in U.S. Caribbean Federal waters will eliminate (1) potential future conflicts between commercial and recreational user groups at the subject fishing grounds, (2) additional ecological, biological, and physical effects that might result from recreational fishing for deep-water snapper and grouper, including risks to managed species that may result from misuse of buoy gear and bycatch of managed species by the recreational sector, and (3) any safety concerns potentially associated with the recreational use of buoy gear at the deep-water reef fish fishing grounds. This final rule and Amendments 1 also modify the definition of buoy gear to allow commercial fishermen in U.S. Caribbean Federal waters to use a maximum of 25 hooks with buoy gear to reflect how the gear is commonly used by commercial fishermen in state waters in Puerto Rico and the USVI.

Management Measures Contained in This Final Rule

This final rule prohibits the use of buoy gear by the recreational sector in the U.S Caribbean and modifies the buoy gear definition to increase the maximum number of allowable hooks used by the commercial sector in the U.S. Caribbean.

Recreational Buoy Gear Prohibition

Buoy gear is currently an authorized gear type for those fishing recreationally for species that are not managed by the Council (*i.e.,* non-FMP species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. As described in Amendments 1, although the use of buoy gear by the recreational sector currently appears unlikely, this final rule takes a precautionary approach to prevent any future use of buoy gear by the recreational sector to fish for any species (*i.e.,* managed and non-managed species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. With respect to non-managed species, the Magnuson-Stevens Act gives the Council and NMFS the authority to regulate fishing activity to support the conservation and management of fisheries. This can include regulations that pertain to fishing for non-managed species.

This final rule limits the use of buoy gear to the commercial sector to prevent any potential future conflicts between commercial and recreational user groups resulting from the use of buoy gear. These potential conflicts could include competition for fishing grounds. This final rule also eliminates any additional ecological, biological and physical effects that might occur through additional recreational fishing-related pressure at those grounds and to those resources, including overfishing the deep-water snapper and grouper resources, risks to managed species from misuse of the buoy gear and increased bycatch of managed species that might result through the recreational use of buoy gear. Finally, the final rule eliminates safety concerns potentially associated with the presence of an emerging recreational fleet at the deep-water reef fish fishing grounds that could occur because of the specialized characteristics of the buoy gear operations.

Revision of Buoy Gear Definition

The current buoy gear definition, which applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean, specifies, among other measures, that this gear type may have no more than 10 hooks connected between the buoy and the terminal end.

This final rule changes the buoy gear definition to increase the maximum number of hooks allowed between the buoy and the terminal end from 10 to 25 hooks in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John. This change in the buoy gear definition applies only where buoy gear is authorized in the U.S. Caribbean EEZ, and applies only to the commercial sector as a result of this final rule. NMFS notes that this change applies to the commercial harvest of both Council-managed fisheries and non-managed fisheries. The increased number of

authorized buoy gear hooks will allow commercial fishermen fishing in Federal waters off Puerto Rico, St. Croix, and St. Thomas and St. John to legally use the same gear configuration that is commonly used by some commercial fisherman in state waters.

This revision to the buoy gear definition in the U.S. Caribbean will also avoid enforcement complications for commercial fishermen harvesting multiple species on a trip because it will allow the use of the buoy gear with up to 25 hooks to harvest managed and non-managed deep-water fish. The change to the buoy gear definition will not change any other part of the buoy gear definition such as weight, construction materials for the drop line, and length of the drop line. Additionally, the current buoy gear definition, as it applies to the Gulf of Mexico and South Atlantic, will not change as a result of this final rule.

Measure Contained in This Final Rule Not in Amendments 1

In addition to the buoy gear measures contained in Amendments 1, this final rule corrects an error from a previous rulemaking. On September 13, 2022, NMFS published in the **Federal Register** the final rule implementing the island-based FMPs for the U.S. Caribbean (87 FR 56204, September 13, 2022). That final rule contained a minor administrative error in 50 CFR 622.440(a)(2), ''Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs),'' related to a notation for the recreational ACL for mutton snapper in Table 2 to § 622.440(a)(2). Mutton snapper, which is an indicator stock for Snappers, Snapper 4, is notated in that final rule with an asterisk when it should have been annotated with a superscript ''1.'' In Table 2 of 50 CFR 622.440(b)(2), all indicator stocks are to be notated with the superscript ''1.'' NMFS became aware of this inadvertent minor administrative error after the island-based FMPs final rule published. This final rule revises the notation for mutton snapper in Table 2 to 50 CFR 622.440(a)(2), Snappers, Snapper 4, to be a superscript ''1.'' The recreational ACLs in the paragraph remain the same and do not change in this final rule.

Comments and Reponses

NMFS received two comments on the notice of availability and one comment on the proposed rule for Amendments 1. Comment submissions were from members of the general public and a fishermen organization. One comment was in support of the actions in Amendments 1.

NMFS has not made any changes from the proposed rule to this final rule based on public comment.

Specific comments related to Amendments 1 and the proposed rule are grouped as appropriate and responded to below.

Comment 1: The Council wants to prohibit fishing with vertical bottom line fishing gear, (known locally as ''cala'' in Puerto Rico) as it is used in Puerto Rico.

Response: NMFS clarifies that neither Amendment 1 to the Puerto Rico FMP or this final rule prohibit the use of all vertical bottom line (''cala'') for fishing in the EEZ around Puerto Rico or the rest of the Caribbean EEZ. Amendments 1 and this final rule specifically prohibit the use of buoy gear, which is a configuration of the vertical bottom line, only for use by the recreational sector. The use of buoy gear by the commercial sector will continue to be authorized. The final rule limits the use of buoy gear to the commercial sector to prevent any potential future conflicts between commercial and recreational user groups resulting from the use of buoy gear. As described in Amendments 1, limiting the use of buoy gear to the commercial sector also avoids any additional ecological, biological, and physical effects that might occur through additional recreational fishing-related pressure where buoy gear is currently used. These effects include reducing the risk of overfishing of the deep-water snapper and grouper resources, risks to managed species from misuse of the buoy gear, and increased bycatch of managed species that might result through the recreational use of buoy gear.

Buoy gear, known as ''cala con boya'' in Puerto Rico and as deep-drop buoy gear in the USVI, is typically used by commercial fishermen in Puerto Rico, and to a lesser extent in the USVI, to harvest deep-water snappers and groupers in waters up to 1,500 ft (457 m). As amended by this final rule, buoy gear is defined in 50 CFR 622.2 as fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks (except in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John where the maximum is 25 hooks) can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg).

Therefore, while this final rule prohibits the use of buoy gear for the recreational sector in the Caribbean EEZ, this final rule does not restrict the use of buoy gear and vertical bottom line for the commercial sector in the Caribbean EEZ.

Comment 2: The Council and NMFS want to eliminate the use of buoy gear by the recreational sector even though the sector does not use this type of fishing gear in Caribbean Federal waters. If the Council and NMFS are concerned about pressure on the deep-water reef fish fishery, they should reduce the number of commercial hooks allowed rather than increase them.

Response: As described in Amendments 1, there are no recreational fishing data showing that the recreational sector operating in U.S. Caribbean Federal waters uses or has used buoy gear. This is likely because buoy gear is a very specialized commercial gear type that is expensive and generally difficult to use by anyone other than a professional commercial fisherman. NMFS agrees with the Council that it is appropriate to limit its use to those fishing commercially. As noted in the response to *Comment #1,* this precautionary approach eliminates potential future conflicts between commercial and recreational user groups at the deep-water fishing grounds, potential risks to managed species that may result from misuse of buoy gear by the recreational sector, including overfishing the deep-water snapper and grouper resources from additional fishing pressure, bycatch of managed species by the recreational sector, and any safety concerns potentially associated with the recreational use of buoy gear at the deep-water reef fish fishing grounds. NMFS notes that increasing the maximum number of hooks that are allowed while using buoy gear by the commercial sector in U.S. Caribbean Federal waters allows commercial fishermen to legally use the same gear configuration that is commonly used by some commercial fisherman who target deep-water snapper and grouper in Puerto Rico, St. Croix, and St. Thomas and St. John state waters. Puerto Rico and USVI territorial regulations, do not limit the number of hooks allowed on deep-water reef fish buoy gear.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendments 1, the island-based FMPs, the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the statutory basis for this final rule. No

duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance requirements are introduced in this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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 final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments from the public were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 600

Caribbean, Fisheries, Fishing, Recreational.

50 CFR Part 622

Buoy gear, Caribbean, Commercial, Fisheries, Fishing, Recreational.

Dated: July 13, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR parts 600 and 622 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continue to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under heading ''V. Caribbean Fishery Management Council'', revise entries 1.H., 2.H, and 3.H. to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * *	* * *
V. Caribbean Fishery Management Council	
1. Exclusive Economic Zone around Puerto Rico:	
* * * *	* * *
H. Puerto Rico Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
2. Exclusive Economic Zone around St. Croix:	
* * * *	* * *
H. St. Croix Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
3. Exclusive Economic Zone around St. Thomas and St. John:	
* * * *	* * *
H. St. Thomas and St. John Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
* * * *	* * *

* * * * *

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 4. In § 622.2, revise the definition of ''Buoy gear'' to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Buoy gear means fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks (except in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John where the maximum is 25 hooks) can be connected between the buoy and terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The drop line can be rope (hemp, manila, cotton or other natural fibers; nylon, polypropylene, spectra or other synthetic material) or monofilament, but must not be cable or wire. The gear is free-floating and not connected to other gear or the vessel. The drop line must be no greater than 2 times the depth of the water being fished. All hooks must be attached to the drop line no more than 30 ft (9.1 m) from the weighted terminal end. These hooks may be attached directly to the drop line; attached as snoods (defined as an offshoot line that is directly spliced, tied or otherwise connected to the drop line), where each snood has a single terminal hook; or as gangions (defined as an offshoot line connected to the drop line with some type of detachable clip), where each gangion has a single terminal hook.

* * * * *

■ 5. In § 622.440, revise table 2 to paragraph (a)(2) to read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(2) * * *

TABLE 2 TO § 622.440(a)(2)

Family	Stock or stock complex and species composition	Recreational ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	2,985 lb (1,353.9 kg).
Groupers	Grouper 3—coney [1], graysby	19,634 lb (8,905.8 kg).
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper, yellowmouth grouper	5,867 lb (2,661.2 kg).
	Grouper 5—misty grouper, yellowedge grouper	4,225 lb (1,916.4 kg).
	Grouper 6—red hind [1], rock hind	34,493 lb (15,645.7 kg).
Grunts	Grunts—white grunt	2,461 lb (1,116.2 kg).
Jacks	Jacks 1—crevalle jack	41,894 lb (19,002.7 kg).
	Jacks 2—African pompano	5,719 lb (2,594 kg).
	Jacks 3—rainbow runner	8,091 lb (3,670 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redtail parrotfish, stoplight parrotfish, striped parrotfish.	17,052 lb (7,734.6 kg).
Snappers	Snapper 1—black snapper, blackfin snapper, silk snapper [1], vermilion snapper, wenchman	111,943 lb (50,776.4 kg).
	Snapper 2—cardinal snapper, queen snapper [1]	24,974 lb (11,328 kg).
	Snapper 3—lane snapper	21,603 lb (9,798.9 kg).
	Snapper 4—dog snapper, mutton snapper [1], schoolmaster	76,625 lb (34,756.5 kg).
	Snapper 5—yellowtail snapper	23,988 lb (10,880.7 kg).
	Snapper 6—cubera snapper	6,448 lb (2,924.7 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	860 lb (390 kg).
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish [1]	7,453 lb (3,380.6 kg).
Wrasses	Wrasses 1—hogfish	8,263 lb (3,748 kg).
	Wrasses 2—puddingwife, Spanish hogfish	5,372 lb (2,436.6 kg).

[1] Indicator stock.

* * * * *

[FR Doc. 2023–15219 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 138
Thursday, July 20, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1499; Project Identifier MCAI–2023–00458–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 adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes. This proposed AD was prompted by a determination that the cold working process was partially completed on a certain circumferential joint. This proposed AD would require modification of the circumferential joint, 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 September 5, 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–2023–1499; 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 EASA material that is proposed for IBR in this NPRM, 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–2023–1499.
- 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: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@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–2023–1499; Project Identifier MCAI–2023–00458–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 Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0054, dated March 14, 2023 (EASA AD 2023–0054) (also referred to as the MCAI), to correct an unsafe condition for Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes, manufacturer serial numbers (MSNs) 1780, 1782, 1784, 1785, 1787, 1799, 1805, 1808, 1822, 1823, 1830, 1835, 1845, 1847, 1848, 1854, 1857, 1859, 1864, 1872, 1877, 1878, 1882, 1883, 1886, 1888, 1891, 1911, 1916, 1919, 1932, 1936, 1942, 1945, 1960, 1964, 1965, 1968, and 1969. Airbus SAS Model A330–243 airplanes, MSNs 1787, 1799, 1808, 1822, 1830, 1848, 1857, 1883, 1886, 1891, 1911, 1916, 1919, 1942, 1945, 1960, 1965, and 1968, were modified to Airbus SAS Model A330–243 Multi Role Transport Tanker (MRTT) airplanes. The MRTT airplanes are not type certificated by the FAA and not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the

applicability. The MCAI states the cold working process was partially completed on the circumferential joint at frame 58. This condition, if not addressed, could affect the structural integrity of the airplane and result in catastrophic failure.

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–2023–1499.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0054 specifies procedures for modifying the circumferential joint at frame 58. Modification includes accomplishing rotating probe inspections of the fastener holes for cracks, cold work of the fastener holes, and measuring the maximum hole diameter. EASA AD 2023–0054 also specifies contacting the manufacturer for instructions if any discrepancy (*i.e.,* any crack or if the existing hole diameter is more than or equal to the minimum starting hole diameter) is found during any inspection. 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

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA 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 require accomplishing the actions specified in EASA AD 2023–0054 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 2023–0054 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0054 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 2023–0054 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0054. Service information required by EASA AD 2023–0054 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1499 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect one airplane of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 86 work-hours × $85 per hour = $7,310	$500	Up to $7,810	Up to $7,810.

The FAA has received no definitive data on which to base the cost estimate for the on-condition actions specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS Airplanes: Docket No. FAA–2023–1499; Project Identifier MCAI–2023–00458–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 5, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes, certificated in any category, manufacturer serial numbers 1780, 1782, 1784, 1785, 1805, 1823, 1835, 1845, 1847, 1854, 1859, 1864, 1872, 1877, 1878, 1882, 1888, 1932, 1936, 1964, and 1969.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that the cold working process was partially performed on the circumferential joint at frame 58. The FAA is issuing this AD to address a partially completed cold working process on the circumferential joint at frame 58. The unsafe condition, if not addressed, could affect the structural integrity of the airplane and result in catastrophic failure.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0054, dated March 14, 2023 (EASA AD 2023–0054).

(h) Exceptions to EASA AD 2023–0054

(1) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0054.

(2) Where paragraph (2) of EASA AD 2023–0054 specifies contacting Airbus before further flight for approved instructions if any discrepancy is detected during accomplishment of any inspection that is part of the modification, this AD requires repairing the discrepancy before further flight 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) Where paragraph (3) of EASA AD 2023–0054 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where Note 2 of EASA AD 2023–0054 specifies Airbus Operators Information Telex (OIT) 999.0086/11 can be used to determine whether an airplane is operated short range (SR) or long range (LR), this AD requires using the following definitions: the term ''short range'' applies to an airplane with an average flight time lower than 1.5 flight hours per flight cycle, and the term ''long range'' applies to an airplane with an average flight time equal to or higher than 1.5 flight hours per flight cycle. For determining the SR and LR airplanes, the average flight time is the total accumulated flight hours, counted from takeoff to touchdown, divided by the total accumulated flight cycles at the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0054, dated March 14, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0054, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15273 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1498; Project Identifier MCAI–2023–00459–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 adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, and A330–900 series airplanes. This proposed AD was prompted by a determination that part of a certain production ground test procedure used to confirm inner fuel tank integrity was not accomplished properly on certain airplanes. This proposed AD would require a fuel tank leak test and, depending on findings, accomplishment of applicable corrective action, 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 September 5, 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–2023–1498; 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; 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–2023–1498.
- For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@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–2023–1498; Project Identifier MCAI–2023–00459–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 Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0052, dated March 14, 2023 (EASA AD 2023–0052) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, and A330–941 airplanes. Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that a determination has been made that the differential pressure test across Rib 3, part of the production ground test procedure used to confirm inner fuel tank integrity, was not properly accomplished on airplanes delivered before July 2021. The FAA is issuing this AD to address lack of inner fuel tank integrity that, in the case of an uncontained engine rotor failure and subsequent fuel tank puncture, could lead to insufficient fuel available to ensure continued safe flight and landing.

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–2023–1498.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0052 specifies procedures for performing a leak test of the inner fuel tanks for discrepancies (*i.e.,* leaks; a leak test is failed if, during a secondary recording of capacitance values, the aft inner tank probe FIN 25QT1(FIN 25QT2) and FIN 123QT1(FIN 123QT2) values reduce by 2pF when compared with those in the initial recording) and, depending on findings, accomplishing applicable corrective action. Corrective actions include performing the applicable fault isolation and rectification.

Airbus Service Bulletin A330–28–3141, dated December 16, 2022, specifies serial numbers of affected airplanes.

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

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information 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 require accomplishing the actions specified in EASA AD 2023–0052 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 2023–0052 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0052 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 2023–0052 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0052. Service information required by EASA AD 2023–0052 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1498 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$43,520

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1498; Project Identifier MCAI–2023–00459–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 5, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS airplanes, certificated in any category, specified in paragraphs (c)(1) through (5) of this AD, and with serial numbers identified in Airbus Service Bulletin A330–28–3141, dated December 16, 2022.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a determination that the differential pressure test across Rib 3, part of the production ground test procedure used to confirm inner fuel tank integrity, had not been properly accomplished on airplanes delivered before July 2021. The FAA is issuing this AD to address lack of inner fuel tank integrity that, in the case of an uncontained engine rotor failure and subsequent fuel tank puncture, could lead to insufficient fuel available to ensure continued safe flight and landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation

Safety Agency (EASA) AD 2023–0052, dated March 14, 2023 (EASA AD 2023–0052).

(h) Exceptions to EASA AD 2023–0052

(1) Where EASA AD 2023–0052 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0052.

(3) Where the service information referenced in EASA AD 2023–0052 specifies repeating a step and recording certain values, replace the text ''Do step 1 b again and record the capacitance values and then every 10 minutes for 60 min,'' with ''Repeat step 1 b and record the capacitance values every 10 minutes for 60 minutes.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0052 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.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (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 Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@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) Airbus Service Bulletin A330–28–3141, dated December 16, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0052, dated March 14, 2023.

(3) For EASA AD 2023–0052, 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) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*

(5) 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.

(6) 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 July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15253 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1501; Project Identifier MCAI–2023–00647–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a report the engine fire extinguishing control and indication system did not illuminate correctly. This proposed AD would require installing a software update to the integrated cockpit control panel (ICCP) remote data concentrator (RDC), as specified in a Transport Canada 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 September 5, 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–2023–1501; 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 Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.* It is also available at *regulations.gov* under Docket No. FAA–2023–1501.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1501; Project Identifier MCAI–2023–00647–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 William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–28, dated May 4, 2023 (Transport Canada AD CF–2023–28) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states a deficiency in the design of the engine fire extinguishing control and indication system was discovered. After the loss of one hot battery DC bus, the AVAIL legend on BTL 1 and BTL 2 push button annunciators (PBAs) will not illuminate green upon pressing the corresponding ENG FIRE PBA. This condition affects both L ENG FIRE and R ENG FIRE PBAs on the overhead panel. The misleading indication given by the AVAIL legend on BTL 1 and BTL 2 PBAs will affect the crew's assessment of the situation. The crew may hesitate to extinguish an engine fire despite having access to a functional engine fire extinguishing system, or may reselect the FIRE PBA, resulting in loss of the ability to isolate and extinguish the fire.

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–2023–1501.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2023–28 specifies procedures for installing the software update to the integrated cockpit control panel (ICCP) remote data concentrator (RDC) to restore the intended functionality of the PBA green indications.

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** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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 require accomplishing the actions specified in Transport Canada AD CF–2023–28 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 Transport Canada AD CF–2023–28 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2023–28 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2023–28 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1501 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 76 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × $85 per hour = $510	Up to $7,500	Up to $8,010	Up to $608,760.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2023–1501; Project Identifier MCAI–2023–00647–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 5, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–28, dated May 4, 2023 (Transport Canada AD CF–2023–28).

(d) Subject

Air Transport Association (ATA) of America Code: 26, Fire protection.

(e) Unsafe Condition

This AD was prompted by a report the engine fire extinguishing control and indication system did not illuminate correctly. The FAA is issuing this AD to address the misleading indication given by the AVAIL legend on BTL 1 and BTL 2 Push Button Annunciators (PBAs) that will affect the crew's assessment of the situation. The unsafe condition, if not addressed, could result in the crew hesitating to extinguish an engine fire despite having access to a functional engine fire extinguishing system, or may reselect the FIRE PBA, resulting in loss of the ability to isolate and extinguish the fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–28.

(h) Exceptions to Transport Canada AD CF–2023–28

Where Transport Canada AD CF–2023–28 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–28, dated May 4, 2023.

(ii) [Reserved]

(3) Transport Canada AD CF–2023–28, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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 July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15274 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB58

Children's Online Privacy Protection Rule Proposed Parental Consent Method; Application of the ESRB Group for Approval of Parental Consent Method

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission (FTC or Commission) requests public comment concerning the proposed parental consent method submitted by the Entertainment Software Rating Board, Yoti Ltd. and Yoti (USA) Inc., and SuperAwesome Ltd. (''the ESRB group''), under the Voluntary Commission Approval Processes provision of the Children's Online Privacy Protection Rule.

DATES: Written comments must be received on or before August 21, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Invitation to Comment portion of the **SUPPLEMENTARY INFORMATION** section below. Write ''Application for Parental Consent Method, Project No. P235402'' on your comment and file your comment online through *https://regulations.gov.*

If you prefer to file a comment in hard copy, please write ''Application for Parental Consent Method, Project No. P235402'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex P), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Peder Magee, Attorney, (202–326–3538), or James Trilling, Attorney, (202–326–3497), Division of Privacy and Identity Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On October 20, 1999, the Commission issued its final Rule [1] pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq,* which became effective on April 21, 2000.[2] On December 19, 2012, the Commission amended the Rule, and these amendments became effective on July 1, 2013.[3] The Rule requires certain website operators, among other things, to post privacy policies, provide notice, and obtain verifiable parental consent, prior to collecting, using, or disclosing personal information from children under the age of 13. The Rule enumerates methods for obtaining verifiable parental consent, while also allowing interested parties to file a written request for Commission approval of parental consent methods not currently enumerated.[4] To be considered, parties must submit a detailed description of the proposed parental consent method, together with an analysis of how the method meets the requirements for parental consent described in 16 CFR 312.5(b)(1).

Pursuant to 16 CFR 312.12(a), the ESRB group has submitted a proposed parental consent method to the Commission for approval. The ESRB group proposes a consent mechanism that uses facial age estimation technology, which analyzes the geometry of the consenting person's face to confirm the person is an adult. The full text of its application is available on the Commission's website at *www.ftc.gov* and on the docket for this project at *www.regulations.gov.*

Section B. Questions on the Parental Consent Method

The Commission is seeking comment on the proposed parental consent method and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the Commission's consideration of the application and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the number of the question being answered. For all comments submitted, please provide any data, statistics, or any other evidence, upon which those comments are based.

1. Is this method already covered by existing methods enumerated in 16 CFR 312.5(b)(2)?

2. If this is a new method, provide comments on whether the proposed parental consent method meets the requirements for parental consent laid out in 16 CFR 312.5(b)(1). Specifically, the Commission is looking for comments on whether the proposed parental consent method is reasonably calculated, considering available technology, to ensure that the person providing consent is the child's parent.

3. Does this proposed method pose a risk to consumers' personal information, including consumers' biometric information? If so, is that risk outweighed by the benefit to consumers and businesses of using this method?

4. Does this proposed method pose a risk of disproportionate error rates or other outcomes for particular demographic groups? If so, is that risk outweighed by the benefit to consumers and businesses of using this method?

Section C. Invitation To Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 21, 2023. Write ''Application for Parental Consent Method, Project No. P235402'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission is subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To make sure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Application for Parental Consent Method, Project No. P235402'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex P), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your

[1] 64 FR 59888 (1999).

[2] 16 CFR part 312.

[3] 78 FR 3972 (2013).

[4] 16 CFR 312.12(a); 78 FR at 3991–3992, 4013.

comment does not include any sensitive health information, including medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this publication and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 21, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–15415 Filed 7–19–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2019–0003]

RIN 1218–AD25

Personal Protective Equipment in Construction

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing to revise its personal protective equipment standard in construction to explicitly require that the equipment must fit properly. The agency requests comments regarding the proposed revision.

DATES: Submit comments and attachments, as well as hearing requests and other information, by September 18, 2023. All submissions must provide evidence of the submission date. (See the following section titled **ADDRESSES** for instructions on making submissions.)

ADDRESSES: Comments may be submitted as follows:

Written comments: You may submit comments and attachments, as well as hearing requests and other information, identified by OSHA Docket No. OSHA–2019–0003, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and docket number for this rulemaking (Docket No. OSHA–2019–0003). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download comments or other information in the docket, go to *http://www.regulations.gov.* All comments and submissions are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2500 (TDY number 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, OSHA Office of Communications, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical inquiries: Vernon Preston, OSHA Directorate of Construction, telephone: (202) 693–2020; email: *preston.vernon@dol.gov.*

Copies of this ***Federal Register*** *notice and news releases:* Electronic copies of these documents are available at OSHA's web page at *http://www.osha.gov.*

Citation Method

In the docket for the personal protective equipment in construction rulemaking, found at *http://www.regulations.gov,* every submission was assigned a document identification (ID) number that consists of the docket number (OSHA–2019–0003) followed by an additional four-digit number (*e.g.,* OSHA–2019–0003–0002). In this notice of proposed rulemaking, citations to items in the docket are referenced by author or title and date, where appropriate. This information can be used to search for a supporting document in the docket at *http://www.regulations.gov.* For example, the citation for the OSHA Publication *Personal Protective Equipment* is (*Personal Protective Equipment,* OSHA 3151–12R, 2004). Some citations include one or more attachments (see, *e.g.,* NABTU, January 5, 2017, Attachment 1). When citing exhibits in the docket, OSHA references the author or title of the document, the date, the attachment number or other attachment identifier, if necessary for clarity, and page numbers (designated ''p.''). In a citation that contains two or more documents, the citations are separated by semicolons. OSHA may also cite items that appear in another docket. When that is the case, OSHA includes the full document ID number for the corresponding docket (*e.g.,* OSHA–2010–0034–4247).

SUPPLEMENTARY INFORMATION:

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H. Consultation and Coordination With Indian Tribal Governments

I. Executive Summary

OSHA is proposing to revise its Personal Protective Equipment (PPE) standard for construction, at 29 CFR 1926.95(c), to explicitly state that PPE must fit properly to protect workers from workplace hazards. This revision would align the language in the PPE standard for construction with the corresponding language in OSHA's PPE standards for general industry and maritime and affirm OSHA's interpretation of its PPE standard for construction as requiring properly fitting PPE. Properly fitting PPE is a critical element of an effective occupational safety and health program. PPE must fit properly in order to provide adequate protection to employees. Improperly fitting PPE may fail to provide any protection to an employee, may present additional hazards, or may discourage employees from using such equipment in the workplace.

The Preliminary Economic Analysis to this rulemaking demonstrates that this rule is not economically significant or a major rule. Because this proposal clarifies an existing requirement, the agency preliminarily concludes that the rule is not expected to impose new costs on employers as a result of a new regulatory requirement. OSHA normally assumes full compliance with existing requirements when performing its analysis of costs related to a new or amended standard. However, in this case, the purpose of the proposed rule is to clarify an existing requirement about which there may be confusion in the regulated community. OSHA therefore seeks public comment on the impact of this clarification, if any, on current employer behavior.

To the extent the clarification in this rule could result in changes in behavior among some employers, OSHA has provided an estimate of the costs for a specified proportion of employers to come into compliance with the already-existing requirement to provide properly fitting PPE. This analysis is being provided as a starting point for public comments and to demonstrate that, even if there were costs to this rule as a result of changed employer behavior, the rule would be feasible to implement. OSHA's cost analysis indicates that the one-time cost of this rulemaking to the construction industry, attributable to potential changes in employer behavior, could be approximately $545,000. To the extent that the rulemaking record indicates there will be changes in employer behavior, and associated costs, as a result of the proposed clarification, OSHA expects that worker safety and health will benefit.

II. Background

A. OSHA's PPE Requirements

Section 6(b)(7) of the OSH Act, 29 U.S.C. 655(b)(7), authorizes OSHA to include requirements for protective equipment within its safety and health standards. PPE is worn by employees to minimize exposure to hazards that can cause severe injuries and illnesses in the workplace. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, or other hazards. PPE includes many different types of protective equipment, such as hard hats, gloves, goggles, safety shoes, safety glasses, welding helmets and goggles, hearing protection devices, respirators, coveralls, vests, and full body suits.

OSHA has specific standards that address PPE in general industry, shipyard employment, maritime terminals, longshoring, and construction. These standards require employers to provide PPE when it is necessary to protect employees from job-related injuries, illnesses, and fatalities. With few exceptions, OSHA requires employers to pay for PPE when it is used to comply with an OSHA standard. In addition, the PPE standards for general industry (29 CFR 1910.132(d)(1)(iii)) and maritime (29 CFR 1915.152(b)(3)) include a specific requirement that employers select PPE that properly fits each affected employee.

OSHA's standard at 29 CFR 1926.95 sets out the requirements for PPE in construction. Section 1926.95(a) provides that all types of PPE ''shall be provided, used, and maintained in a sanitary and reliable condition whenever it is necessary by reason of hazards.'' Section 1926.95(b) goes on to provide that, even when employees provide their own PPE, ''the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.'' Section 1926.95(c) provides that all PPE ''shall be of safe design and construction for the work to be performed.'' Unlike the general industry and maritime PPE standards, the current PPE construction standard at section 1926.95 does not include an explicit requirement that PPE properly fit each affected employee.

PPE must fit properly in order to provide adequate protection to employees. If PPE does not fit properly, it can make the difference between an employee being safely protected or dangerously exposed. In some cases, ill-fitting PPE may not protect an employee at all, and in other cases it may present additional hazards to that employee, and to employees who work around them. For example, sleeves of protective clothing that are too long or gloves that do not fit properly may make it difficult to use tools or control equipment, putting other workers at risk of exposure to hazards. The legs of protective garments that are too long could cause tripping hazards and impact others working near the worker with improperly fitting PPE. The issue of improperly fitting PPE is particularly important for smaller construction workers, including some women, who may not be able to use standard size PPE. Fit problems can also affect larger workers, especially with regard to the size of certain harnesses.

B. Rulemaking History

The Advisory Committee on Construction Safety and Health (ACCSH) is a continuing advisory body established by statute (40 U.S.C. 3701 *et seq.*) that provides advice and assistance to the OSHA Assistant Secretary on construction standards and policy matters. The issue of proper PPE fit in construction was discussed at the ACCSH meeting held on July 28, 2011. At that meeting, the committee unanimously passed a motion recommending that OSHA use the Standards Improvement Project-Phase IV (SIP–IV) rulemaking ''to update the Construction PPE Standards to mirror the General Industry PPE requirements, specifically that PPE fit the employee who will use it . . . .'' (ACCSH Meeting Minutes, July 28, 2011). On December 16, 2011, ACCSH unanimously passed another motion recommending that OSHA consider using the SIP–IV rulemaking to revise the construction standards to include the requirement that PPE properly fit construction workers. (ACCSH Meeting Transcript, December 16, 2011, pp. 144–148).

On December 6, 2013, OSHA issued a SIP–IV Request for Information (RFI)

asking the public ''to identify provisions in OSHA standards that are confusing or outdated, or that duplicate, or are inconsistent with, the provisions of other standards, either OSHA standards or the standards of other agencies.'' (SIP–IV RFI, December 6, 2013). In response, several commenters, including the AFL–CIO and the International Safety Equipment Association (ISEA), recommended that OSHA use the SIP–IV rulemaking to revise its construction PPE standard to ensure that PPE properly fits all construction employees. (AFL–CIO, February 13, 2013; ISEA, February 4, 2013).

Based on stakeholder suggestions, on October 4, 2016, OSHA published the SIP–IV Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. (SIP–IV NPRM, October 4, 2016). Among other things, OSHA proposed revising 29 CFR 1926.95(c) to include an explicit requirement that PPE must properly fit each affected employee. In the preamble to the SIP–IV NPRM, OSHA stated that the proposed revision would ''clarify the construction PPE requirements on this point and make them consistent with general industry PPE requirements.'' (SIP–IV NPRM, October 4, 2016). Additionally, OSHA stated that clarifying the requirement would ''help ensure employers provide employees with properly fitting PPE, thereby adequately protecting employees exposed to hazards requiring PPE.'' (SIP–IV NPRM, October 4, 2016).

OSHA received several comments specifically addressing the proposed revision to section 1926.95(c) in the SIP–IV NPRM. Some commenters fully supported the proposed revision while a coalition of construction industry stakeholders opposed it. OSHA discusses the specific comments received during the SIP–IV rulemaking in the next section of this preamble.

Based on the comments received, and the rulemaking record, on May 13, 2019, OSHA published the SIP–IV final rule in the **Federal Register**. (SIP–IV Final Rule, May 13, 2019). The final rule did not include the proposed revision to the construction standard at section 1926.95(c). Instead, OSHA determined that such a revision to the construction PPE standard should occur in a separate rulemaking outside the SIP process. In the preamble to the final rule, OSHA explained that proposing to revise the PPE requirements separate from the SIP–IV rulemaking ''would provide the public with broader notice of the proposal, encourage robust commentary, and better inform OSHA's approach to employer obligations and worker safety in relation to PPE used in construction.'' (SIP–IV Final Rule, May 13, 2019).

On July 17, 2019, OSHA presented a draft proposed rule to ACCSH for its recommendation, as required by the advisory committee for construction regulation at 29 CFR 1912.3(a). The committee asked OSHA to review enforcement statistics on PPE fit and consider including guidelines for what constitutes ''proper fit.'' (ACCSH Meeting Transcript, July 17, 2019). One member of ACCSH expressed concern that OSHA would require employers to present a ''fit verification'' to an OSHA compliance officer during a workplace inspection. In response, OSHA explained that the proposed rule would not change how employers currently assess the PPE needs of their workers. OSHA also explained that the proposed revision had been included in the SIP–IV rulemaking in an effort to make the construction standard consistent with the general industry and maritime PPE standards. In addition, while some ACCSH members did not believe there would be a cost associated with the proposed rule, one member asked OSHA to consider cost closely given the transient nature of the construction industry. After the period for comments and questions ended, ACCSH unanimously passed a motion recommending that OSHA move forward with the proposed rule.

C. Comments Received During the SIP–IV Rulemaking

OSHA received four comments on the proposed revision of § 1926.95(c) in response to the SIP–IV NPRM. The Laborers' Health & Safety Fund of North America (LHSFNA) and North America's Building Trades Union (NABTU) both supported the proposed revision to clarify that PPE must properly fit each affected employee. (LHSFNA, January 5, 2017; NABTU, January 5, 2017, Attachment 1). Both commenters also stated that improperly fitting PPE can limit or negate the ability of the PPE to protect employees. According to NABTU, ''[t]his is particularly important for women in the construction industry, who often have difficulty obtaining properly fitting PPE.'' (NABTU, January 5, 2017, Attachment 1, p. 6). LHSFNA commented that the fit problem can also affect men, including with respect to harness sizes for men who are over certain weight limits. (LHSFNA, January 5, 2017, p. 3). NABTU stated that the proposed revision would not only make the construction standard consistent with the general industry standard, but was also supported by worker organizations, safety associations, and ACCSH. (NABTU, January 5, 2017, Attachment 1, p. 6).

OSHA also received a comment in support of the proposed revision from Emmanuel Omeike (Omeike, December 4, 2016), a safety professional, which included two studies addressing PPE and women in construction. (Omeike, December 4, 2016, Attachments 3, 4). The comment noted examples of several employees who were wearing PPE, but nonetheless sustained injuries due to improper fit. (Omeike, December 4, 2016, p. 10). Mr. Omeike stated that employees are more likely to remove improperly fitting PPE, thus negating whatever protection the PPE might otherwise provide. (Omeike, December 4, 2016, pp. 11–12). Lastly, the commenter stated that prevention through design can eliminate many costs associated with PPE because PPE designed to be adjustable and customizable can prevent employee exposure to hazards created by improperly fitting PPE.

Additionally, OSHA received comments from the Construction Industry Safety Coalition (CISC) (CISC, January 4, 2017) opposing the proposed revision to section 1926.95(c). This commenter raised concerns about the possible impact the proposed revision would have on the construction industry, the definition of ''properly fits,'' employer confusion regarding compliance, and whether the SIP–IV rulemaking was the appropriate means to revise the standard. ''CISC does not believe that OSHA seriously considered the full impact this revision will have on employers and the construction industry in general. While the proposed revision only adds a few new words, its broad scope covers a wide variety of PPE and situations that are not fully appreciated in the SIP–IV . . . Placing an explicit requirement that employers must ensure that all types of construction PPE 'properly fits' all different sized employees in all different situations would be a monumental task which in many cases is not necessary and will not improve safety. Moreover, the proposed revision fails to provide adequate notice to employers as to what 'properly fit' would mean. Does this mean that an employee who complains that a hard hat is uncomfortable does not 'properly fit' or what about arc-flash clothing that may be too long in the legs for one employee, does this not properly fit?'' (CISC, January 4, 2017, p. 7). CISC also commented that revising § 1926.95(c) to include an explicit requirement that all PPE fit properly ''greatly changes the dynamic of th[e] standard and places enormous new responsibilities on construction

employers.'' The comment went on to state that the proposed revision does not simply clarify the standard, but ''opens up construction employers to subjective standards of whether particular PPE fits properly and what steps employers must take to ensure that such PPE fits properly, particularly when most PPE does not come in exact sizing for employees.'' (CISC, January 4, 2017, p. 8). CISC added that, in many cases, whether PPE properly fits is subjective and that it would be difficult for employers in construction to assess PPE for many employees of varying sizes in every situation. ''[T]he subjective nature of this standard would greatly increase the potential for enforcement actions without giving employers fair notice of what is required.'' (CISC, January 4, 2017, p. 8).

CISC also stated that it disagreed with OSHA's statement in the preamble to the SIP–IV proposed rule that applying the same standard to construction employers will have the same effect or benefit as in general industry. The comment emphasized that the types and need for PPE vary greatly in construction, therefore adding a new fit requirement will create more of a burden for construction employers. (CISC, January 4, 2017, p. 8). CISC also argued that SIP–IV was not the appropriate avenue for making the proposed change, and urged OSHA to embark on ''a more thorough and complete rulemaking process which gives fair notice to the regulated community and will allow the agency to receive comments from the regulated community as to the impact and implications that this change would have on employers.'' (CISC, January 4, 2017, p. 8).

In response to the comments provided by CISC, OSHA acknowledges that there is a wide variety of PPE and hazards in the construction industry. To protect workers from these varied hazards in the construction industry, it is critical that workers' PPE fit them properly. OSHA used the phrase ''proper fit'' in the SIP–IV rulemaking because that is the phrase used in OSHA's general industry and maritime PPE standards. The agency's intention throughout the SIP–IV rulemaking was to apply the proposed ''properly fits'' provision in the same manner as in general industry and maritime. OSHA further notes that the addition of the ''properly fits'' provision to the general industry standard was made for the same reason it was proposed during the SIP–IV rulemaking— that standard-sized PPE does not fit all employees, particularly women. (See 59 FR 16334 (April 6, 1994)). OSHA's experience is that employers in general industry have had no issue understanding the phrase ''properly fits'' with regard to PPE.

Finally, as stated in the preamble to the SIP–IV final rule, ''the purpose of SIP–IV is to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards.'' (SIP–IV Final Rule, May 13, 2019). Given the limited purposes of SIP–IV, and the comments on the PPE revision described above, OSHA determined not to finalize the revision to § 1926.95(c) in the SIP–IV rulemaking. Instead, OSHA concluded that such a change to the PPE construction standard should take place outside the SIP process. OSHA believes that by proposing this change independently of the SIP rulemaking process, the agency in this case is encouraging robust public comment. As a result, OSHA expects that its approach to employer obligations and worker safety in relation to properly fitting PPE in construction will be better informed. In addition, many of the specific issues raised by commenters during the SIP–IV rulemaking have been considered by OSHA and are addressed elsewhere in this preamble.

D. Consideration of National Consensus Standards

In adopting a standard, section 6(b)(8) of the OSH Act (29 U.S.C. 655(b)(8)) requires OSHA to consider national consensus standards; where the agency decides to depart from the requirements of a national consensus standard, it must explain why the OSHA standard better effectuates the purposes of the OSH Act. OSHA has reviewed national consensus standards on PPE and determined that it would better effectuate the purposes of the OSH Act to revise OSHA's existing construction standard as described in this proposed rule.

There are many consensus standards that address PPE, with each standard focusing on a different type of equipment. For example, OSHA incorporates by reference American National Standards Institute (ANSI) Z87.1, Occupational and Educational Personal Eye and Face Protection Devices, and ANSI Z89.1, Head Protection, into its construction standards. However, there are several other PPE consensus standards that address not only different types of PPE, but also different uses for that PPE, such as NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire. Rather than adopting each PPE consensus standard, and whatever language it may include on proper fit, OSHA proposes to revise its existing construction standard to make it clear that all types of PPE used in the workplace must fit properly. OSHA believes that centralizing the requirement in the OSHA construction standard will make employers more aware of their responsibility to ensure that PPE used to protect workers from hazards must fit properly.

Additionally, many consensus standards do not include mandatory language. For example, both of the ANSI standards discussed above include specific language concerning properly fitting PPE. However, while ANSI Z87.1 discusses the importance of properly fitting eye and face protection, the standard does not include mandatory language regarding its use. Similarly, rather than including mandatory language, ANSI Z89.1 merely refers users of head protection equipment to the manufacturer for advice on proper fit. The revision to section 1926.95(c) outlined in this proposed rule would make properly fitting PPE an enforceable requirement rather than the non-mandatory suggestions contained in these consensus standards. The agency believes that a clear and explicit enforceable requirement will help ensure that employers provide employees with properly fitting PPE. OSHA requests comment on whether this proposal will better effectuate the purposes of the OSH Act than the applicable national consensus standards.

III. Discussion of Proposed Changes

A. Section 1926.95(c)

Based on the information collected from stakeholders, the recommendations from ACCSH, comments received during the SIP–IV rulemaking, and the important role properly fitting PPE plays in protecting workers, OSHA proposes to amend 29 CFR 1926.95(c) to explicitly require employers to ensure that all PPE that is selected properly fits each affected employee. Current § 1926.95(c) states ''All personal protective equipment shall be of safe design and construction for the work to be performed.'' However, unlike OSHA's general industry and maritime standards, the current standard for construction does not contain an explicit requirement that PPE must properly fit each affected employee.

OSHA proposes to amend section 1926.95(c) to include the requirement, in subparagraph (c)(2), that employers select PPE that properly fits each affected employee. OSHA also proposes

to move the current language in section 1926.95(c) regarding safe design and construction to subparagraph (c)(1). As proposed, paragraph (c) would include language requiring employers to ensure that both requirements in subparagraphs (c)(1) and (c)(2) are met. OSHA believes that adding the language explicitly requiring properly fitting PPE in proposed subparagraph (c)(2) will help to ensure that employees are provided with PPE that protects them from workplace hazards.

OSHA requests comment on the proposed language in § 1926.95(c). Specifically, is the proposed language, which is consistent with OSHA's general industry and maritime standards, appropriate? Why or why not? Should subparagraph (c) include different language regarding the proper fit of PPE? If yes, what should the different language be, and why?

B. The Existing Standard

Although OSHA is proposing to add clarifying language to the current PPE construction standard to improve awareness of the requirement for properly fitting PPE, OSHA has historically interpreted the language in the current PPE construction standard to require all PPE to properly fit each affected employee. Specifically, 29 CFR 1926.95(a) provides that PPE ''shall be provided [and] used . . . [in a] reliable condition wherever it is necessary by reason of hazards.'' PPE is thus ''necessary'' when hazards exist in the workplace, but ill-fitting PPE is not ''in a reliable condition'' because it risks failing to mitigate the hazards that make the PPE necessary. For instance, if hazardous chemicals make PPE in the form of reliable protective clothing or a face shield necessary, ill-fitting PPE may fail to reliably protect the worker from exposure to those hazardous chemicals.

Similarly, under subsection (b), employers must assure the ''adequacy'' of employees' own PPE. PPE is manifestly inadequate if the fit is so poor it cannot perform its protective function. Also, it would make little sense to require employee-provided PPE to be adequate, but not to require the same of employer-provided PPE. Lastly, subsection (c) requires that PPE must be ''of safe design . . . for the work to be performed.'' This provision requires that the specific design of the PPE, which would include its measurements and size, be safe for the work to be performed by each individual worker.

OSHA's PPE standard for construction requires action from the employer to protect each individual worker. Subsection (a) of section 1926.95 requires employers to assess the actual hazards to employees in their workplaces and provide PPE whenever it is necessary to protect against those hazards, and subsection (b) requires employers to assess the adequacy, including the maintenance and sanitation, of employee-provided PPE—which an employer can only do by reviewing each piece of PPE individually. Finally, it is not logical to read subsection (c) as only requiring that the PPE be safely designed in the abstract. For example, gloves may be safely designed to protect against a particular hazard, but they may not be safely designed for a worker whose hands are so small that the gloves fall off throughout the workday or get caught in the machinery the worker is required to use.

An examination of OSHA's guidance addressing PPE use in the construction industry reinforces OSHA's longstanding position that PPE used in construction must fit properly to protect workers from hazards. These guidance documents expressly state that PPE should fit properly and explain the hazards of ill-fitting PPE. The OSHA publication *Personal Protective Equipment,* which explains that ''the information methods, and procedures . . . are based on the OSHA requirements for PPE,'' including § 1926.95, states ''Employers should take the fit and comfort of PPE into consideration when selecting appropriate items for their workplace. PPE that fits well and is comfortable to wear will encourage employee use of PPE. Most protective devices are available in multiple sizes and care should be taken to select the proper size for each employee. If several different types of PPE are worn together, make sure they are compatible. If PPE does not fit properly, it can make the difference between being safely covered or dangerously exposed. It may not provide the level of protection desired and may discourage employee use.'' (*Personal Protective Equipment,* OSHA 3151–12R, 2004, p. 8). OSHA's *Fact Sheet on Personal Protective Equipment,* which refers to § 1926.95, explains that after determining hazards are present that require the use of PPE, an employer must ''select personal protective equipment that properly fits your workers.'' (*Fact Sheet on Personal Protective Equipment,* April 2006)). Also, *Assessing the Need for Personal Protective Equipment,* a document created by OSHA's Directorate of Training and Education, includes a checklist for various types of PPE. For each type of PPE listed, there is an entry for ensuring ''effective fit'' of the PPE. (*Assessing the Need for Personal Protective Equipment*).

Additionally, OSHA has developed guidance for specific types of PPE. For example, OSHA's *Eye and Face Protection eTool* is a comprehensive resource for assessing workplace hazards necessitating the use of eye and face protection and how to choose the appropriate protection. (*Eye and Face Protection eTool,* accessed July 23, 2020). The eTool lists the construction standards under ''OSHA Requirements,'' and discusses proper fit of eye protection. Also, in the eTool's ''FAQs,'' the document explains that training should include why improper fit of the eye and face protection can compromise protection.

OSHA requests comment on whether the inclusion of an explicit requirement in § 1926.95(c) would help clarify construction employers' obligations to provide properly fitting PPE to their employees.

C. Properly Fitting PPE

PPE is an essential element of an effective safety and health program. While many OSHA standards require employers to control or eliminate safety and health hazards before relying on PPE to protect employees, PPE often provides a critical last line of defense to protect individual employees. PPE that fits improperly not only fails to protect workers from the hazards it is designed to protect against, but it may also create additional hazards for those workers.

In many cases, ill-fitting PPE may not provide any protection at all to an individual employee. For example, ill-fitting gloves may slip and expose an employee's skin to hazardous chemicals. Improperly fitting goggles may have gaps at the temples, and expose the employee to flying debris entering their eyes. Further, there are some cases in which ill-fitting PPE may create additional hazards for employees. For example, improperly fitting protective clothing that is too long in the legs may present a tripping hazard for an employee, or an improperly fitting glove may become caught in machinery being operated by the employee. In *Personal Protective Equipment for Women: Addressing the Need,* a report prepared by the Ontario Women's Directorate (OWD) and Industrial Accident Prevention Association (IAPA), a women stated she suffered a broken finger using a grinder while wearing gloves that were too big for her hands. (OWD & IAPA, 2006, p. 13). A comment described above, from safety professional Emmanuel Omeike, noted several instances of employees who were wearing PPE, but nonetheless

sustained injuries due to improper fit. (Omeike, December 4, 2016, p. 10).

The construction industry includes many high-risk occupations, with various safety and health hazards. It is also comprised of a diverse workforce, including many employees who are not of a certain ''standard'' size or body type. For these workers, improperly fitting PPE may pose safety or health risks. For example, improperly fitting PPE can be an issue for small-stature construction workers, including some women, who may not be able to use PPE that is only available in a standard size. In the 1999 report *Women in the Construction Workplace: Providing Equitable Safety and Health Protection,* by ACCSH's Health and Safety of Women in Construction (HASWIC) workgroup, women shared that standard sized PPE was difficult or impossible to use. One woman explained how she was issued a welding jacket with sleeves ''a foot longer than her hand,'' that she had to roll up, potentially exposing her to burn hazards. (HASWIC, 1999). Additionally, some standard-sized PPE may be too small for larger workers and expose them to hazards as a result.

Access to properly fitting PPE has always been an important safety and health issue for women working in construction. In the past, because women made up a relatively small percentage of the construction workforce, many manufacturers of protective equipment were reluctant to invest in research and development to produce correctly sized and proportioned products for women. Historically, manufacturers and suppliers have produced and sold protective equipment designed to fit average-sized men. As a result, ill-fitting PPE could jeopardize the safety and health of female construction workers.

Based on Bureau of Labor Statistics (BLS) Current Employment Statistics and the Census Bureau's County Business Patterns (CBP) data, there were approximately 974,000 women working in the construction industry in 2018. (OSHA PEA Spreadsheet, 2023).[1] As a result of more women working in the construction industry, the availability of PPE for women has increased. The ISEA reports that many employers now provide a full range of sizes for PPE. (ISEA, February 4, 2013). Also, ISEA and the Center to Protect Workers' Rights (CPWR) have developed lists of manufacturers who offer safety and health equipment that is appropriate for women working in construction. (ISEA List of Female PPE Manufacturers, accessed October 27, 2020; CPWR—Construction Personal Protective Equipment for the Female Workforce, accessed October 27, 2020). OSHA requests comment on the availability of PPE for persons who may be smaller or larger than the average worker in the construction industry or for persons with other physical characteristics that differ from the average worker.

In addition to adversely impacting safety and health, ill-fitting PPE can also reduce an employee's job efficiency. For example, an ill-fitting glove may cause an employee to use more energy to grip a piece of equipment, resulting in fatigue. In the HASWIC report, a woman shared her experience of using welding gloves that were so large she was unable to pick up anything. (HASWIC, 1999). Also, employees are more likely to remove or not use ill-fitting PPE, negating whatever protection the PPE might otherwise provide. (See Omeike, December 4, 2016, pp. 11–12). In *Personal Protective Equipment for Women: Addressing the Need,* survey participants cited poorly fitting gloves as a major problem, with one woman saying she tended not to use them because they were awkward. (OWD & IAPA, 2006, p. 13).

It is OSHA's position that ''properly fits'' means the PPE is the appropriate size to provide an employee with the necessary protection from hazards, and does not create additional safety and health hazards arising from being either too small or too large. When PPE fits properly, employees are unlikely to discard or modify it because of discomfort or interference with their work activities. OSHA is not concerned with the cosmetic appearance, or ''exact fit'' of PPE. The proposed standard does not include the phrase ''exact fit'' in the regulatory text. Instead, the proposed rule uses the phrase ''properly fits,'' consistent with the OSHA general industry and maritime PPE standards. The agency believes that providing clear and explicit language in the construction standard on PPE fit will help ensure employers provide employees with properly fitting PPE, thereby ensuring protection for employees exposed to workplace hazards.

D. OSHA Enforcement of PPE Fit Requirements

OSHA anticipates that application of the proposed language requiring properly fitting PPE in the construction standard would be the same as for general industry and maritime. Sections 1910.132(d)(1)(iii) and 1915.152(b)(3) each explicitly provide that the employer must select PPE that properly fits each affected employee. Appendix B of 29 CFR 1910, Subpart I (PPE), which provides assistance for employers in selecting PPE, provides: ''5. Fitting the device. Careful consideration must be given to comfort and fit. PPE that fits poorly will not afford the necessary protection. Continued wearing of the device is more likely if it fits the wearer comfortably. Protective devices are generally available in a variety of sizes. Care should be taken to ensure that the right size is selected.'' This same type of guidance would apply to the proposed new requirement for proper fit in section 1926.95(c)(2).

OSHA has reviewed its enforcement data for the general industry and maritime standards that require PPE to properly fit and for the PPE requirements in 29 CFR 1926.95(a)–(c). The enforcement data spans from April 6, 1994, when OSHA promulgated revisions to the PPE requirements in general industry requiring PPE to fit properly (see 59 FR 16334), to July 30, 2021.

During that period of time, OSHA cited employers 51 times for violations of 1910.132(d)(1)(iii) and one time for a violation of 1915.152(b)(3). In many cases, employers were cited for not providing gloves that properly fit employees, exposing them to chemical and physical hazards. In one case, an amputation occurred when a worker's improperly fitting latex glove was caught between a power steering belt and a pulley. (Inspection No. 908699).[2] An employer was also cited for failing to provide small and medium gloves to workers exposed to numerous chemical hazards. (Inspection No. 896842). Another inspection resulted in a violation of the standard because gloves that were too large for some employees reduced their dexterity. (Inspection No. 1418803). There were also several instances where employers provided workers with personal fall arrest systems that did not fit the employee properly, exposing them to fall hazards. (Inspection Nos. 638178, 1006483, 1346323, 1417821). In one instance, an employer provided workers with improperly fitting conductive booties, leading not only to electrical shock hazards, but also tripping hazards. (Inspection No. 525479). OSHA cited one employer under the general industry standard for inadequate PPE where duct tape was used to secure PPE to spats in an effort to provide protection from burns caused by molten aluminum. (Inspection No. 514938). In

[1] See the Preliminary Economic Analysis, below, for a description of how this figure was derived.

[2] Records for inspections referenced in this document can be found at *https://www.osha.gov/pls/imis/InspectionNr.html.*

maritime, the one violation resulted from a rigger working on a mast without a properly fitting fall protection harness, exposing the rigger to fall hazards. (Inspection No. 894520).

In construction, from April 6, 1994 to July 30, 2021, OSHA issued 1,722 citations for violations of 29 CFR 1926.95(a)–(c); most of the citations were for violations of section 1926.95(a). OSHA cited the inappropriate fit of PPE nine times, all under 29 CFR 1926.95(a). The majority of these instances were for improperly fitting gloves that exposed employees to hazards. (Inspection Nos. 1074915, 1103257, 1255622, 1291644, 1062401, 1062798). In one instance, an employer was cited because their employee did not wear protective eyewear because it did not fit over the employee's prescription eyewear. (Inspection No. 1074380).

These citations help to demonstrate that fit has always been an important part of meeting the PPE requirements in OSHA's construction standards. Without its consideration, workers can be exposed to multiple types of workplace hazards, including physical, chemical, and environmental hazards. The language of this proposed rule will make the requirement for properly fitting PPE clear and increase awareness of employers' obligations when choosing and evaluating PPE for their workers.

E. Issues for Comment

In addition to the questions throughout the preamble, OSHA seeks comment on the following issues related to this proposed rulemaking:

- Will this proposal effectuate the purposes of the OSH Act better than the applicable national consensus standards?
- ACCSH recommended that OSHA consider developing additional guidance to explain what ''proper fits'' means for PPE used in construction. (ACCSH Meeting Transcript, July 17, 2019). Is existing OSHA guidance regarding PPE ''proper fit'' in construction adequate? If not, what type of additional guidance should OSHA provide?
- Is there confusion about what ''properly fits'' means for PPE used in the construction industry?
- How would the proposed revision impact the construction industry? Specifically, would revising the construction standard to mirror the language in the current general industry and maritime standards change how employers choose PPE for their employees? How?
- Are there differences between general industry and maritime, and the construction industry, that impact whether OSHA should include the phrase ''properly fits'' in the construction standard?
- Are there types of PPE that are not available in varying sizes? If yes, please give specific examples of the PPE and how you address this in the workplace.
- Finally, what, if any, burden will the proposed change to section 1926.95(c) impose on employers in the construction industry?

In addition, see the issues for comment in section IV.C of this preamble.

IV. Agency Determinations

A. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970) (''OSH Act,'' 29 U.S.C. 651 *et seq.*) is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. (29 U.S.C. 654, 655(b), and 658). A safety or health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' (29 U.S.C. 652(8)). A safety standard is reasonably necessary or appropriate within the meaning of 29 U.S.C. 652(8) if:

- It substantially reduces a significant risk of material harm in the workplace;
- It is technologically and economically feasible;
- It uses the most cost-effective protective measures;
- It is consistent with, or is a justified departure from, prior agency action;
- It is supported by substantial evidence; and
- It is better able to effectuate the purposes of the OSH Act than any relevant national consensus standard.

(See *United Auto Workers* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (*Lockout/Tagout*)). In addition, safety standards must be highly protective. (See id. at 669).

A standard is technologically feasible if the protective measure it requires already exist, available technology can bring these measures into existence, or there is a reasonable expectation for developing the technology that can produce these measures. (See, *e.g., American Iron and Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) (per curiam) (*Lead II*)). A standard is economically feasible when industry can absorb or pass on the cost of compliance without threatening an industry's long-term productivity or competitive structure. (See *American Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490, 530 n.55 (1981); *Lead II,* 939 F.2d at 980). A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. (See, *e.g., Lockout/Tagout,* 37 F.3d at 668).

Section 6(b)(7) of the OSH Act (29 U.S.C. 655(b)(7)) authorizes OSHA to include requirements for protective equipment within a standard. It provides that, where appropriate, standards must prescribe suitable protective equipment and control or technological procedures to be used in connection with workplace hazards and must provide for monitoring or measuring employee exposure as necessary to protect employees. (29 U.S.C. 655(b)(7)).

B. Significant Risk

Section 3(8) of the OSH Act requires that OSHA standards be ''reasonably necessary or appropriate to provide safe or healthful employment'' (29 U.S.C. 652(8)), which the Supreme Court has interpreted as requiring OSHA to show that ''significant risks are present and can be eliminated or lessened by a change in practices.'' (*Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607, 642 (1980) (plurality opinion) (*Benzene*)). The Court clarified that OSHA has considerable latitude in defining significant risk and in determining the significance of any particular risk, noting that ''[i]t is the agency's responsibility to determine, in the first instance, what it considers to be a 'significant' risk.'' (*Id.* at 655).

Although OSHA makes significant risk findings for both health and safety standards, the methodology used to evaluate risk in rulemakings involving safety standards is normally more straightforward. Unlike the risks related to health hazards, which ''may not be evident until a worker has been exposed for long periods of time to particular substances,'' the risks associated with safety hazards ''are generally immediate and obvious.'' (*Benzene,* 448 U.S. at 649, n.54).

OSHA need not make findings on risk for the proposed change to 29 CFR 1926.95(c). This proposed rule involves a clarification of an existing OSHA standard and would not create any new requirements for employers. Accordingly, OSHA is not required to conduct a significant risk analysis for the proposed changes to section

1926.95. (See *Edison Elec. Inst.* v. *OSHA,* 849 F.2d 611, 620 (D.C. Cir. 1988)).

C. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

Executive Orders 12866 and 13563 require that OSHA estimate the benefits, costs, and net benefits of regulations. The Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of rules that the agency promulgates. In addition, the OSH Act requires that OSHA show the economic feasibility of standards.

A standard is economically feasible when industries can absorb or pass on the costs of compliance without threatening industry's long-term profitability or competitive structure (*Cotton Dust,* 452 U.S. at 530 n. 55), or ''threaten[ing] massive dislocation to, or imperil[ing] the existence of, the industry.'' (*United Steelworkers of Am.* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1981) (*Lead I*)). ''[T]he Supreme Court has conclusively ruled that economic feasibility [under the OSH Act] does not involve a cost-benefit analysis.'' (*Pub. Citizen Health Research Grp.* v. *U.S. Dept. of Labor,* 557 F.3d 165, 177 (3d Cir. 2009)). The OSH Act ''place[s] the 'benefit' of worker health above all other considerations save those making attainment of this 'benefit' unachievable.'' (*Cotton Dust,* 452 U.S. at 509). Therefore, ''[a]ny standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in'' the statute. (*Id.*). This case law arose with respect to health standards issued under section 6(b)(5) of the Act, which specifically require a showing of feasibility; OSHA has also rejected the use of formal cost benefit analysis for safety standards, which are not governed by section 6(b)(5). (See 58 FR 16,612, 16,622–23 (Mar. 30, 1993) (''in OSHA's judgment, its statutory mandate to achieve safe and healthful workplaces for the nation's employees limits the role monetization of benefits and analysis of extra-workplace effects can play in setting safety standards.'')).

The purpose of this rule is to revise the language of the PPE requirements in the construction standard to make it consistent with the requirement in OSHA's general industry and maritime standards. This rule is not an ''economically significant regulatory action'' under Executive Order 12866 or UMRA, and it is not a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*) or § 804 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for a significant regulatory action or major rule. Finally, this rule complies with Executive Order 13563.

Preliminary Economic Analysis

OSHA is amending the construction standard at 29 CFR 1926.95—Criteria for Personal Protective Equipment (PPE), paragraph (c), to clarify that PPE must properly fit each employee. The existing standard states that PPE shall be of safe design and construction for the work to be performed and current paragraph (a) states that PPE shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary. As discussed in more detail elsewhere in this preamble, for PPE to provide protection against the hazards for which it is designed, it must fit properly.

OSHA views the proposed revision to section 1926.95(c) as a clarification of existing requirements and therefore preliminarily concludes that the rule is not expected to impose new costs on employers as a result of a new regulatory requirement. OSHA normally assumes full compliance with existing requirements when performing its analysis of costs related to a new or amended standard. However, in this case, the purpose of the proposed rule is to clarify an existing requirement about which there may be confusion in the regulated community. To the extent the clarification in this rule could result in new changes in behavior among some employers, OSHA has estimated the costs for a specified proportion of employers to come into compliance with the already-existing requirement to provide properly fitting PPE. This analysis is being provided as a starting point for public comments and to demonstrate that, even if there were costs associated with this rule as a result of changed employer behavior, the rule would be feasible to implement.

As discussed above in Section II.C, Comments Received During the SIP–IV Rulemaking, OSHA previously proposed revising the language in section 1926.95(c) to clarify that PPE must properly fit each employee. During that rulemaking, while several commenters supported the revision to section 1910.95(c), the CISC commented that the proposed revision would increase the costs to employers for providing PPE (CISC, January 4, 2017). Specifically, CISC commented that amending paragraph (c) would result in employers maintaining inventory of PPE that would not otherwise be necessary without the revised language. However, the proposed revision to paragraph (c) contains no such requirement, and employers would only be required to have PPE that properly fits their employees. As OSHA explained above, this is a requirement that already exists under the construction standard; the new language merely clarifies that requirement. In the long run, the cost of inventory should be largely unaffected by this rulemaking as employers will need to use one size or another for each affected employee. In other words, the employer will only need to provide each employee with one set of PPE under the revised regulatory language, which is the case whether the PPE fits properly or not. In addition to safety issues, equipment that is ill fitting may wear out faster or reduce worker productivity on the job. Moreover, it is inherently cost-ineffective to pay for PPE that does not perform its essential function properly or that the worker will not wear consistently.

On November 15, 2007, OSHA published a final rule addressing Employer Payment for Personal Protective Equipment (PPE Payment) (72 FR 64341). In that rulemaking, OSHA identified the various types of PPE that are worn by employees, and the numbers of employees that would typically use each type of PPE, in the construction industries: NAICS 236 (Construction of Buildings), NAICS 237 (Heavy and Civil Engineering Construction), and NAICS 238 (Specialty Trade Contractors). As part of its analysis, OSHA also calculated the cost, and estimated the useful life, of each item of PPE (see 72 FR 64406–64408).

As shown in Table 1, below, OSHA has preliminarily determined that the types of PPE used in construction fall into the following three categories: PPE provided by the employer and not of universal fit, PPE items purchased by the employee and reimbursed by the employer, and PPE of universal fit.

TABLE 1—PPE USED IN THE CONSTRUCTION INDUSTRIES *

Provided by the employer, not universal fit	Provided by employee and reimbursed	Universal fit
Chemical Protective Clothing, Chemical Protective Footwear, Chemical Splash Goggles, Earmuffs, Face Shields, Gloves for Abrasion Protection, Gloves for Chemical Protection, Non-Prescription Safety Glasses, Safety Goggles, Safety Vests, Splash Aprons.	Prescription Safety Glasses, Protective Electrical PPE, Protective Welding Clothing, Safety Shoes with Metatarsal Guards, Safety Shoes Without Metatarsal Guards, Welding Goggles, Welding Helmets.	Body Harnesses, Body Belts, Ear Inserts, Hardhats, Welding Helmets.

* Respirators are not included in the table, as fit testing is already required in paragraph 1910.134(f) of the respiratory protection standard (29 CFR 1910.134(f)), which covers the construction industry. (See 29 CFR 1926.103).
Source: OSHA, Office of Regulatory Analysis (OSHA PEA Spreadsheet, 2023).

PPE items of universal fit are those that are completely adjustable and capable of fitting any person. For those items, the employer will be able to continue providing the same items they are already providing to employees and will not have to replace them as a result of this rule. PPE items purchased by the employee and then reimbursed by the employer should already fit properly since the employee should have selected the size that fits them best. Considering that these employee-purchased PPE items likely already fit, the employer will not have to replace them until they have reached the end of their useful life. As a result, employers would incur no cost for replacing those items under this proposed rule. The remaining PPE items are those provided by the employer that are not universal fit. For these items, the standard size may not fit all workers—primarily people who are much larger or much smaller than average. Therefore, in cases where employers have provided standard-sized PPE, some workers may not have been provided properly fitting PPE. OSHA has preliminarily determined the average useful life for the PPE items that are provided by the employer and are not universal fit, as presented in Table 2.

TABLE 2—USEFUL LIFE OF SELECTED PPE

Provided by the employer, not universal fit	Useful life (yr.)
Chemical Protective Clothing	0.50
Chemical Protective Footwear	0.50
Chemical Splash Goggles	0.50
Earmuffs	0.50
Face Shields	1.00
Gloves for Abrasion Protection	0.25
Gloves for Chemical Protection	0.05
Non-Prescription Safety Glasses	1.00
Safety Goggles	0.50
Safety Vests	0.50
Splash Aprons	0.50

Source: OSHA, Office of Regulatory Analysis (OSHA PEA Spreadsheet, 2023).

In order to estimate the potential costs and impacts of this proposed standard, OSHA has taken the PPE items in Table 2 and updated the information that was in the Final Economic Analysis supporting the PPE Payment rulemaking to estimate the current number of employees that might use each type of PPE [3] and the unit cost of each type of PPE. The PPE Payment analysis was published in 2007 as part of the final rule on PPE Payment. Information on PPE use by employees for the 2007 analysis was derived from a statistically representative nationwide telephone survey of 3,722 employers conducted for OSHA. The survey was benchmarked to the whole working population based on employment data available at that time. (See 72 FR 64391). When the economic analysis for the PPE Payment rule was performed, the most recent data available on numbers of employees was from the U.S. Census' 2004 *County Business Patterns.* OSHA utilized this 2004 data to estimate the number of employees using PPE and the industries they worked in. The most current information on prices for the PPE Payment analysis was from 2007 and was based on the GDP deflator from the Federal Reserve's St. Louis FRED (Federal Reserve Economic Data). In the PPE Payment rulemaking, therefore, the employee numbers were from 2004, based on the CBP's most recent data at that time, and the prices for PPE were from 2007, based on FRED's most recent GDP deflator at the time. These numbers, along with the more recent estimates for the current proposed rule, are presented in Table 3, below.

Similar to the data presented in the PPE Payment rulemaking, OSHA will be relying on data from two different time periods for estimates related to this proposed rule. The most recent data available to estimate the number of employees in the affected industries is from the CBP for 2020; the most recent FRED GDP report, used to make an updated estimate of PPE prices, is from the third quarter of 2022. The total number of PPE items used by employees in 2020 is derived by multiplying the number of employees (based on 2020 CBP data) by the number of PPE items used, per employee, from the Final Economic Analysis supporting the PPE Payment final rule. The agency then uses the unit costs of PPE items (in 2007) from the PPE Payment rule and applies the GDP deflator from the FRED to estimate the unit cost of those PPE items in 2022 dollars. Finally, to get the total potential one-time costs of this proposed standard, OSHA applies those

[3] In the final rule on PPE Payment, OSHA estimated the number of employees in non-State Plan states using any type of PPE (72 FR 64391). OSHA estimates that the proportion of employees who use PPE in the construction industries in all 50 states and territories is the same as the proportion of employees who use PPE in non-State Plan states.

2022 unit costs to the estimated number of PPE items used in 2020 (benchmarked to the updated Census data), based on the proportion of employees that might need replacement PPE.

Using data from the gross domestic product data series (GDP deflator from FRED, *https://fred.stlouisfed.org/series/GDPDEF,* accessed January 20, 2023), OSHA estimates that the average price for PPE in 2022 is 37.4 percent higher than in 2007, the base year for data the agency used when promulgating the PPE Payment rule. Using the most recent data (2020) available from the CBP report (*https://www.census.gov/programs-surveys/cbp/data/tables.html*), OSHA estimates that employment in the construction industries has increased by 8.04 percent since 2004. As part of the PPE Payment rulemaking, OSHA previously estimated that the total number of PPE items worn by construction employees in 2004 was about 13 million. However, in the PPE payment rulemaking analysis, OSHA did not include safety vests in the list of necessary PPE. For this rulemaking, the agency has estimated the cost and use of safety vests and has included them in the number of PPE items worn by construction workers in 2020, the unit cost in 2022, and the total cost in 2022. Using the estimated construction workforce increase of 8.04 percent, the agency estimates that the total number of PPE items worn by construction employees was about 14.9 million in 2020. Dividing the total number of PPE items in use (14,892,806) by the total number of construction workers in 2020 wearing PPE (5,734,977) yields an estimate that each construction employee wearing PPE provided by the employer, and not universal fit, wears an average of 2.6 items of PPE.

In summary, OSHA is preliminarily estimating that the total cost of PPE that is provided by construction employers, and is not universal fit, has increased since 2007. Driven primarily by the aforementioned 37.4 percent price increase between 2007 and 2022, that cost is now estimated to be just over $170 million, including an additional estimated $3.9 million for safety vests. Based on this information, the agency calculates an average per unit PPE cost of $11.45 and an average cost of $29.74 to outfit a construction employee in their needed PPE.

TABLE 3—USE AND COST OF SELECTED PPE USED IN THE CONSTRUCTION INDUSTRIES

PPE provided by the employer, not universal fit	Total PPE items used by employees (2004) U.S.	Total PPE items used by employees (2020) U.S.	PPE unit cost 2007$	PPE unit cost 2022$	Total cost 2022$
Chemical Protective Clothing	358,089	386,877	$41.30	$56.76	$21,960,279
Chemical Protective Footwear	211,871	228,904	21.40	29.41	6,732,595
Chemical Splash Goggles	584,797	631,811	6.20	8.52	5,383,851
Earmuffs	642,362	694,004	13.60	18.69	12,972,241
Face Shields	1,194,399	1,290,422	14.90	20.48	26,426,058
Gloves for Abrasion Protection	2,940,764	3,177,183	8.30	11.41	36,243,886
Gloves for Chemical Protection	896,173	968,219	3.50	4.81	4,657,537
Non-Prescription Safety Glasses	3,485,009	3,765,183	6.20	8.52	32,084,272
Safety Goggles	2,506,959	2,708,504	4.65	6.39	17,309,989
Safety Vests *	NA	828,178	NA	4.65	3,849,472
Splash Aprons	197,632	213,520	10.00	13.74	2,934,632
Total of PPE items used by construction employees	13,018,055	14,892,806			170,554,811
Average per Unit PPE Cost 2022					11.45

* Safety Vests were not included in the 2004 analysis; OSHA Office of Regulatory Analysis has estimated their use in 2020 and their cost in 2022 dollars to be consistent with the use and costs for the other types of PPE. (ERG Cost Analysis for Safety Vests, August 17, 2020).

Source: OSHA, Office of Regulatory Analysis; based on PPE Payment rule (72 FR 64406). (See OSHA PEA Spreadsheet, 2023, tab ''PPE Payment—Cost by PPE'' for unit costs in 2007 and tab ''PPE Payment—PPE Use'' for PPE items used in 2004.)

Given the current lack of data on how many employees might be wearing improperly fitting PPE, OSHA estimated this parameter using some general population height and weight distributions. Based on BLS Current Employment Statistics, OSHA estimates that in 2022, the construction industry was made up of 86 percent men and 14 percent women. According to the CBP, there were 7,182,071 employees in the construction industry in 2020. Taken together, these data suggest that employment in the construction industry is comprised of about 6,173,572 men and about 1,008,499 women. Furthermore, OSHA's 2007 PPE Payment Final Rule estimated that only 79.85 percent of construction employees use PPE of any type. Based on this figure, the agency estimates that about 4,929,677 men and about 805,299 women in the construction industry use any type of PPE.

To estimate what proportion of women and men might require non-standard sizes of PPE,[4] the agency referred to the Census Bureau's 2011 National Health and Nutrition Examination Survey (NHNES) (*https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0205.pdf*). Using height and weight figures for the general population from NHNES, OSHA preliminarily determines, as shown in Table 4, below, that women and men weighing above 300 pounds and women shorter than five feet tall might require non-standard sizes of PPE and thus could have improperly fitting PPE (the base figure was too small to meet statistical standards of reliability of a derived figure for men shorter than five feet tall).[5] OSHA acknowledges that using the general population height and weight distributions may not align precisely with the profile of construction workers. For example, Hispanic males make up a greater

[4] OSHA uses the term ''non-standard'' to refer to sizes of PPE which are available on the market, but which some construction employers may not routinely order or keep in stock.

[5] OSHA's analysis assumes that only construction workers who meet the specified height or weight criteria may require non-standard sizes of PPE. OSHA then draws from this universe of workers when calculating how many workers may actually be using PPE that does not properly fit. OSHA's analysis does not attempt to account for workers who wear standard-sized PPE but may nevertheless have been provided with improperly fitting PPE by their employers.

proportion of the construction workforce than the population in general and are, on average, slightly shorter than, and weigh less than, non-Hispanic white males. It is also possible that there are fewer people who are much smaller or larger than average in the construction industry. OSHA also acknowledges that this estimate is imprecise because it assumes that all workers who weigh more than 300 pounds and all female workers who are shorter than five feet tall require PPE that is not standard sized; conversely, it assumes that standard-sized PPE is appropriate for all other workers. Given the necessity of estimating these parameters, OSHA seeks comment on what characteristics, and what data sources, should be considered when estimating the proportion of employees that might require non-standard sizes of PPE in the construction industries.

Due to data limitations and as a simplifying assumption for this preliminary analysis, the agency also assumes that construction workers are distributed across age groups in the same proportions as the general population examined in the NHNES. The agency then multiplies those percentages by the total number of men, and the total number of women, in the construction industry that wear any type of PPE. Those results are presented here, in Table 4.

TABLE 4—CONSTRUCTION EMPLOYEES WHO MAY REQUIRE NON-STANDARD SIZES OF PPE

Construction employee characteristic	Ages					Average (%)	Total employees (%)
	20–29 (%)	30–39 (%)	40–49 (%)	50–59 (%)	60–69 (%)		
Men Above 300 pounds	2.50	3.10	1.90	1.90	2.20	2.32	114,369
Women Above 300 pounds	2.30	1.60	1.70	0.60	0.70	1.38	11,113
Women Under 5 foot tall	5.70	8.00	5.00	8.00	9.00	7.14	57,498
Total Employees Who May Require Non-Standard Sizes of PPE	....	....	....	....	....	....	182,980

Source: OSHA, Office of Regulatory Analysis (OSHA PEA Spreadsheet, 2023).

The agency estimates that 182,980 construction employees might require non-standard sizes of PPE, but recognizes that not all of those employees are using improperly fitting PPE. OSHA assumes that up to 10 percent of those workers—or 18,298 workers—are currently being provided with incorrectly fitting PPE. At an average, per-person cost of $29.74 for PPE,[6] OSHA preliminarily estimates that replacing the PPE for these 18,298 employees would cost almost $545,000 for the entire construction industry.

TABLE 5—POTENTIAL PPE REPLACEMENT COST

Assumed percent of employees needing replacement PPE (2020)	Total employees	Total cost
10% of Employees	18,298	$544,172
Average Per-Employee PPE Cost (2.6 items per employee)	....	29.74

Source: OSHA, Office of Regulatory Analysis (OSHA PEA Spreadsheet, 2023).

As presented in Table 5, the agency preliminarily estimates that if 10 percent of employees are provided with properly fitting PPE as a result of this clarifying rule, the rule might have a one-time total cost to the construction industry of $544,172. After initially replacing improperly fitting PPE, employers would be expected to continue to provide properly fitting PPE as those items reach the end of their useful life. Since employers need to provide replacement PPE, whether properly fitting or not, in the absence of this clarifying rule, OSHA estimates that there will be no additional on-going costs to provide properly fitting PPE as part of the normal process of replacement.

OSHA seeks comment on all aspects of its preliminary economic analysis, including:

- The types of PPE that construction employees use;
- The types of PPE that are available in different sizes;
- The types of PPE that are universal fit (*i.e.,* they can be adjusted to fit any person);
- Whether there are types of PPE that only come in one standard size that is not adjustable. If yes, give examples;
- The extent of employer reimbursement for employee purchases for various types of PPE;
- Whether the agency's categorization of the various types of PPE into the three categories in Table 1 (provided by the employer, not universal fit; provided by the employee and reimbursed; and universal fit) is accurate, and why or why not;
- The average useful life of various types of PPE;
- The benefits of, and productivity increases from, wearing properly fitting PPE;
- Workplace accidents related to improperly fitting PPE;
- The average cost for each PPE item, including whether there are price differences for different sizes of PPE, as well as the average cost to outfit an employee in necessary PPE;
- Whether employers will need to provide their workers with different sizes of PPE than they are currently providing them, and what specific changes employers will make to their current practices if this rule is finalized as proposed;

[6] OSHA assumes that larger and smaller sizes of PPE cost the same as the average size PPE of that type.

• Whether there are other significant cost elements that have not been accounted for in OSHA's analysis that extend beyond simply acquiring properly fitting PPE;

• Whether employers have incurred additional costs in fitting employees who need non-standard sizes of PPE with PPE that fits properly;

• Whether there will be ongoing costs to employers to provide correctly sized PPE. In particular, OSHA is interested in what ongoing activities employers anticipate they would need to undertake in response to this rule clarification and how much time and expense those activities would require.

Sensitivity Analysis

OSHA believes that instances of employees with improperly fitting PPE are limited given the existing requirement for proper fit. The primary analysis above assumes that only 10 percent of the employees who may require non-standard sizes of PPE would need to have their PPE replaced. For the first sensitivity analysis, the agency compared the assumed 10 percent of potentially affected employees with a lower rate of 5 percent and, alternatively, a higher rate at each quartile of the group (25, 50, and 100 percent). Additionally, some employees may only need one item of replacement PPE while others might have to replace more items. As discussed above, OSHA has estimated that affected employees in construction wear an average of 2.6 pieces of PPE of the type covered by OSHA's analysis; the main analysis assumes they would all need to be replaced. In reality, for individual employees, some items might need to be replaced and not others. The second sensitivity analysis examines the cases where employees need replacements for 1, 2, or 3 items of PPE, along with the 2.6 items used in the primary analysis.

In the first sensitivity analysis, OSHA multiplied the total number of employees who may require non-standard sizes of PPE (182,980) by the various assumed non-compliance percentages. Table 6, below, presents a range of 5 percent to 100 percent non-compliance. OSHA believes most companies want to act in the best interest of their employees and are already in compliance with the existing requirement to provide properly fitting PPE. As such, OSHA believes the actual non-compliance rate is towards the lower end of the range presented in Table 6. At most, fewer than 200,000 employees might be affected.

TABLE 6—EMPLOYEES NEEDING REPLACEMENT PPE

Assumed percent needing replacement PPE	Total employees
5	9,149
10	18,298
25	45,745
50	91,490
75	137,235
100	182,980

For the second sensitivity analysis, OSHA examined the potential number of pieces of PPE that might need to be replaced for each affected employee. In Table 7, below, OSHA calculated the total number of PPE items, in the affected construction industries, that might need to be replaced based on employees needing 1, 2, 3, or the average 2.6 pieces of replacement PPE.

TABLE 7—PPE ITEMS NEEDING REPLACEMENT

Percent of employees needing replacement PPE	Total PPE items needing replacement			
	1	2	2.6	3
5	9,149	18,298	23,758	27,447
10	18,298	36,596	47,517	54,894
25	45,745	91,490	118,792	137,235
50	91,490	182,980	237,585	274,470
75	137,235	274,470	356,377	411,705
100	182,980	365,960	475,169	548,940

To complete the sensitivity analysis, OSHA multiplied the cost of the average piece of affected PPE, calculated as $11.45 per piece, by the number of total items of PPE needing replacement (displayed in table 7, above). The results are presented in table 8, below.

TABLE 8—TOTAL COST OF REPLACEMENT PPE

Percent of employees needing replacement PPE	Total PPE items needing replacement			
	1	2	2.6	3
5	$104,776	$209,552	$272,086	$314,327
10	209,552	419,103	544,172	628,655
25	523,879	1,047,758	1,360,429	1,571,637
50	1,047,758	2,095,517	2,720,859	3,143,275
75	1,571,637	3,143,275	4,081,288	4,714,912
100	2,095,517	4,191,033	5,441,717	6,286,550

TABLE 8—TOTAL COST OF REPLACEMENT PPE—Continued

Percent of employees needing replacement PPE	Total PPE items needing replacement			
	1	2	2.6	3
Per Employee Cost	11.45	22.90	29.74	34.36

Table 8 shows that, as a worst-case scenario, if no employers are providing properly fitting PPE to employees that need non-standard sizes, and if each employee needs 3 items of replacement PPE (more PPE than the average of 2.6 PPE items), then the total one-time cost to industry to provide that properly fitting PPE would be less than $6.3 million. Meanwhile, the cost to industry could be as low as only $105,000.

Benefits

As noted above, rather than impose a new requirement, this proposed rule would clarify an existing requirement in 29 CFR 1926.95(c) for PPE to fit properly. The proposed change harmonizes the PPE fit requirements in construction with those in general industry and maritime and should alleviate any confusion that may exist among construction employers, potentially addressing safety and health hazards caused by improperly fitting PPE.

In 2007, OSHA promulgated the PPE Payment rule, which clarified the responsibilities of employers to pay for PPE (72 FR 64342). In that rule, OSHA noted that PPE must fit properly in order to provide the protection it was designed to provide (*e.g.,* 72 FR 64350–51, 64380). Accompanying the PPE Payment rule was a detailed analysis of the types and numbers of injuries that would likely be prevented by the rule, and the value of those benefits. One finding of the analysis, which implicitly assumed employees would be provided with properly fitting PPE, was that PPE is a particularly cost-effective form of injury prevention, particularly in the construction industry. The analysis found that the economic benefits of preventing an injury with PPE in the construction industry were approximately three times the cost of providing the PPE.[7] While there is substantial uncertainty about whether any costs will be generated by this proposed rulemaking on PPE fit, the agency is confident that if the rule results in construction employers incurring costs for properly fitting PPE, the benefits of the properly fitting PPE will likely exceed the costs. In addition, as has been noted elsewhere, much of the benefit of this rulemaking derives from providing greater clarity in terms of employer obligations.

While OSHA has preliminarily determined that the proposed change will not have quantifiable benefits, the agency requests comment on this preliminary determination. More specifically, if employers were to change the PPE they provide their workers as a result of this rule, what are the anticipated benefits to worker safety and health from these changes? How should OSHA quantify these benefits?

Technological Feasibility

The purpose of the proposed amendment to section 1926.95(c) is to improve clarity for the construction sector, as well as ensure consistency with existing OSHA standards for general industry and maritime. Because the requirement for properly fitting PPE already exists in the construction industry, OSHA believes that providing properly fitting PPE is already common practice among construction employers. OSHA does not believe that employers will encounter any significant obstacles acquiring PPE that will properly fit their workers. Therefore, OSHA preliminarily concludes that this proposed rule would be technologically feasible.[8] The agency welcomes comments on the technological feasibility of the proposal.

Economic Feasibility

OSHA historically has applied two threshold tests to look at economic feasibility for establishments covered by the rule: whether the rule's average per establishment costs as a percentage of average per establishment revenues, for each industry sector, are below 1 percent, and whether those costs as a percentage of profits are below 10 percent.[9] To determine whether there is a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, there are also two threshold tests: whether the average costs for small entities are 1 percent of their average revenues or below, and whether those costs are 5 percent or less of the small entities' profits.[10] None of these threshold tests are hard ceilings or determinative; they are guidelines the agency uses to examine whether there are any potential economic impact issues that require additional study.

Because this is a clarification of an existing requirement, OSHA does not expect the proposed revision to the construction PPE standard to impose new costs on employers as a result of a new regulatory requirement. As previously stated, the proposed provision is consistent with the PPE requirements in the agency's general industry and maritime standards, and in agreement with OSHA's longstanding interpretation of the current requirements for PPE in section 1926.95. As noted above, to the extent the clarification in this rule could result in changes in behavior among some employers, OSHA has provided an estimate of the costs for a specified proportion of employers to come into compliance with the already-existing requirement to provide properly fitting PPE. Even assuming these estimated costs will be incurred by employers as a result of the rule the rule easily passes OSHA's threshold tests for feasibility. The average construction industry employer has revenues of $3.3 million annually [11] and 9 employees.[12] As a worst case scenario, if such an employer had to replace all the PPE at issue in this rulemaking for all of their employees

[7] The 2007 analysis estimated that the rule would prevent almost 5,000 injuries (see Table XV–3) in construction, for a total economic value of approximately $90 million (see Table XV–4), at a cost of approximately $30 million (NAICS 23) (see Table XV–5) (72 FR 64401–64408).

[8] OSHA notes that it is not required to perform a technological feasibility analysis for this proposed rule because it is simply a clarification of an existing requirement. The technological feasibility analysis presented in this document is for informational purposes only.

[9] For example, see p. VI–14 of the Final Economic Analysis supporting OSHA's rule on Respirable Crystalline Silica. Final Economic Analysis and Final Regulatory Flexibility Analysis for OSHA's Rule on Occupational Exposure to Respirable Crystalline Silica, Chapter VI (OSHA–2010–0034–4247).

[10] For example, see OSHA's Final Regulatory Flexibility Screening Analysis in support of the Hazard Communication rule (77 FR 17661).

[11] U.S. 2017 Economic Census. Construction: Summary Statistics for the U.S., States, and Selected Geographies: 2017. Available at *https://data.census.gov.* Table ID EC1700BASIC. (Accessed March 21, 2022.) (OSHA PEA Spreadsheet, 2023).

[12] U.S. 2017 Economic Census. Construction: Summary Statistics for the U.S., States, and Selected Geographies: 2017 reports a total of 715,364 establishments with 6,647,047 employees which averages to 9 employees per establishment. (OSHA PEA Spreadsheet, 2023).

(*i.e.,* 2.6 items per employee), it would cost under $300, which is less than .01% of an average employer's revenues. Therefore, this proposed rule is clearly economically feasible. The agency welcomes comments on its preliminary economic feasibility analysis and determination.

Regulatory Flexibility Screening Analysis and Certification of No Significant Impact on a Substantial Number of Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (as amended)), OSHA examined the regulatory requirements of this rule to determine whether the proposed requirement would have a significant economic impact on a substantial number of small entities. As discussed above, because this is a clarification of an existing requirement, OSHA preliminarily estimates that this rule would impose zero costs on employers. Even if OSHA assumes that this rule would lead to changes in employer behavior and associated costs, however, the costs are minimal and would not be imposed on an ongoing basis. OSHA estimates that, on average, there will be no more than one worker who might be wearing improperly fitting PPE at any given firm. Given that replacement PPE costs less than $30 per employee, this proposal would not impose significant costs on small employers. The agency therefore certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities.

D. OMB Review Under the Paperwork Reduction Act

This proposal contains no information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' (44 U.S.C. 3502(3)(A)).

E. Federalism

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional and statutory authority exists and the problem is national in scope. E.O. 13132 provides for preemption of State law only with the expressed consent of Congress. Any such preemption is to be limited to the extent possible.

Under Section 18 of the OSH Act (29 U.S.C. 667), Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. States and territories that obtain Federal approval for such a plan are referred to as ''State Plans'' (29 U.S.C. 667). Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards and, when applicable to products that are distributed or used in interstate commerce, must be required by compelling local conditions and not unduly burden interstate commerce. (29 U.S.C. 667(c)(2)). Subject to these requirements, State Plans are free to develop and enforce under State law their own requirements for safety and health standards.

In States without OSHA approved State Plans, Congress expressly provides for OSHA standards to preempt State occupational safety and health standards in areas addressed by the Federal standards. In these States, this proposal would limit State policy options in the same manner as every standard or amendment to a standard promulgated by OSHA. In States with OSHA approved State Plans, this rulemaking would not significantly limit State policy options.

The proposed amendment to 29 CFR 1926.95(c) complies with E.O. 13132.

F. State Plans

This proposed rule would revise the language in the construction standard, 29 CFR 1926.95(c), to include an explicit requirement that PPE used in the construction industry must fit properly. This change would be consistent with requirements that exist in the general industry and maritime standards and with OSHA's prior interpretation of the construction standard. When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, OSHA-approved State Plans must either amend their standards to be ''at least as effective as'' the new standard or amendment, or show that an existing state standard covering this area is already ''at least as effective'' as the new Federal standard or amendment. (29 CFR 1953.5(a)). State Plan adoption must be completed within six months of the promulgation date of the final Federal rule. OSHA concludes that this proposed rule, by including an explicit requirement that PPE used in the construction industry must fit properly, will maintain or increase the protection afforded to employees. Therefore, within six months of the final rule's promulgation date, State Plans would be required to adopt amendments to their standards that are ''at least as effective,'' unless they demonstrate that such amendments are not necessary because their existing standards are already ''at least as effective'' in protecting workers as the final Federal rule.

The 29 OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. The Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands State Plans cover state and local government employees only, while the rest cover the private sector and state and local government employees.

G. Unfunded Mandates Reform Act

OSHA reviewed this proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*). As discussed above in Section IV.C of this preamble, the agency preliminarily determined that this proposal would not impose costs on any private- or public-sector entity. Accordingly, this proposal would not require additional expenditures by either public or private employers. Even to the extent that changes in behavior resulting from the rule would lead to employers expending money for new, properly fitting PPE, these costs are minimal and will only be incurred one time.

As noted above, the agency's standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate.'' (See Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the agency certifies that this proposal would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations. Further, OSHA concludes that the rule would not impose a Federal mandate on the private sector in excess of $100

million (adjusted annually for inflation) in expenditures in any one year.

H. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it would not have ''tribal implications'' as defined in that order. The amendment to the PPE standard for construction, if promulgated, would not have substantial direct effects 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.

List of Subjects in 29 CFR Part 1926

Construction, Personal Protective Equipment, Occupational safety and health.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this document pursuant to 29 U.S.C. 653, 655, and 657; 40 U.S.C. 3701 *et seq.;* 5 U.S.C. 553; Secretary of Labor's Order 8–2020, 85 FR 58393 (2020); and 29 CFR part 1911.

Signed at Washington, DC, on July 14, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble, OSHA proposes to amend 29 CFR part 1926 to read as follows:

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart E—Personal Protective and Life Saving Equipment

■ 1. The authority citation for subpart E is revised to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), 1–2012 (77 FR 3912), or 8–2020 (85 FR 58393), as applicable; and 29 CFR part 1911.

■ 2. Amend § 1926.95 by revising paragraph (c) to read as follows:

§ 1926.95 Criteria for personal protective equipment.

* * * * *

(c) Design and selection. Employers must ensure that all personal protective equipment:

(1) Is of safe design and construction for the work to be performed; and

(2) Is selected to ensure that it properly fits each affected employee.

* * * * *

[FR Doc. 2023–15285 Filed 7–19–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AR97

Loan Guaranty: Servicer Regulation Changes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to rename and clarify certain loss-mitigation terms used in VA's regulations. VA is proposing these changes to align the names and definitions with their general use in the housing finance industry. VA believes that these proposed revisions would help avoid confusion and enable servicers and veterans to address loan defaults more quickly and effectively.

DATES: Comments must be received on or before September 18, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Andrew Trevayne, Assistant Director for Loan and Property Management, and Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

VA's Loan Guaranty Service offers home loan programs that assist eligible veterans, service members, and certain surviving spouses (hereinafter collectively referred to as ''veteran'') to buy, build, improve, or refinance a home. When a VA-guaranteed loan goes into default, the servicer may attempt to resolve the default using a loss-mitigation option that enables the veteran to remain in their home (*e.g.,* repayment plan, special forbearance, or loan modification) or avoid foreclosure through compromise sale or deed in lieu of foreclosure.[1]

While regulations in 38 CFR part 36 are specific to VA-guaranteed loans, the loss-mitigation options outlined are typical across the housing finance industry. VA has received feedback that the names of certain servicing terms used in VA regulations are not aligned with how those terms are named in the housing finance industry, occasionally leading to confusion amongst stakeholders and veterans.

Additionally, VA's inconsistency in using the terms ''written'' and ''documented'' to reference various agreements in servicing regulations may be confusing for servicers as to whether new technologies enabling certain loss-mitigation agreements to be established and documented in non-written formats are acceptable to VA. For example, as part of the final rule implementing the VA Loan Electronic Reporting Interface (VALERI) and corresponding regulations, VA updated its regulation pertaining to acceptance of partial payments by removing the requirement for a repayment plan to be ''written'' and adding that it must be ''documented.'' [2] However, other

[1] See 38 CFR 36.4319.

[2] See 38 CFR 36.4316(b). As background, VA amended its regulation pertaining to partial payments as part of an overhaul of existing VA loan guaranty program requirements. On February 18, 2005 (70 FR 8472, 8475), VA proposed amendments to then-existing 38 CFR 36.4315. Thereafter, on June 1, 2007 (72 FR 30505), VA published a supplemental proposed rule outlining VA's plan to phase-in the new 38 CFR part 36 regulations. This plan included temporarily designating then-existing provisions found at 38 CFR 36.4300 through 36.4393 (the ''36.4300 series'') as a new subpart B and establishing a new subpart F to include new 38

references to repayment plan and other loss-mitigation agreements, such as loan modifications, still contain references to a ''written'' requirement.[3]

With this proposed rulemaking, VA would make revisions throughout 38 CFR part 36 to better align certain loss-mitigation and servicing terms with the industry. VA is also proposing amendments to clarify that written signatures are not required in order to execute certain loss-mitigation agreements.

II. Legal Authority

Congress has authorized VA to oversee and regulate the servicing of VA guaranteed loans. See 38 U.S.C. 501 and chapter 37. This includes implementing or clarifying program requirements for the mortgage servicing industry such as determining the acceptable documentation for a VA guaranteed loan and clarifying servicing loan procedures. During the last several years, the mortgage servicing industry has undergone various technological advancements which caused necessary procedural adjustments. Therefore, VA is proposing these amendments pursuant to its statutory authority found in section 501 and chapter 37 of title 38, United States Code.

III. Summary of Proposed Changes

A. Amend ''Compromise Sale'' to ''Short Sale''

VA is proposing to amend the term ''compromise sale'' to ''short sale'' to be consistent with the name the housing finance industry uses to refer to this type of transaction.[4] Specifically, in § 36.4301, VA would remove the definition for ''Compromise sale'' and add a definition for ''Short sale'' to read as follows: ''A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.'' Also, in the definition for liquidation sale in § 36.4301, VA would revise the third sentence to refer to ''short sale'' instead of ''compromise sale.'' Similarly, VA would remove the references to compromise sale and add in its place short sale each place it appears in §§ 36.4317(c)(21); 36.4319(a), (b), and (c)(4); and 36.4322(e)(1), (1)(ii), (2), and (f)(1)(iii).

B. Amend ''Refund'' to ''VA Purchase''

Loan Guaranty Service regulations currently use the term ''refund'' to denote two separate types of transactions that are entirely different in context and purpose. First, in 38 CFR 36.4320, VA uses the term ''refund'' to refer to a transaction when VA pays a holder the current unpaid principal balance of a VA-guaranteed loan in exchange for transfer and assignment of the guaranteed loan to VA. Another way of understanding this transaction is that VA purchases the loan from the holder and becomes the new loan holder. VA also uses the term ''refund'' as it is more commonly understood when referring to instances in which VA requires the holder to return certain monetary amounts to a veteran.[5]

To avoid confusion, VA is proposing to remove the term ''refund'' and add in its place ''VA purchase'' whenever that term is used to refer to a transaction described in § 36.4320. Specifically, VA would amend the heading for § 36.4320 by removing ''Refunding'' and adding ''VA purchase'' in its place. In § 36.4320(c), VA would remove ''refund'' and add in its place ''purchase.'' Additionally, VA proposes to amend § 36.4317(c)(30) and (31) to clarify how those terms are used for servicer reporting requirements. In choosing the term ''VA purchase,'' VA notes that the relevant statutory authority for this transaction (38 U.S.C. 3732(a)) does not refer to the transaction as a refund. Instead, section 3732(a)(2)(A) describes a transaction where VA, at its own option, ''pay[s] the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive[s] an assignment of the loan and security,'' which is much more consistent with the common definition of purchase.[6]

C. Removing References to ''Written'' and ''Executed'' Agreements

VA is also proposing to remove the references to ''written'' and ''executed'' in regard to repayment plans and special forbearance agreements and replace with a requirement that an agreement be documented. A written, executed agreement can seem more specific and limiting in its form and manner of establishment; that is, it may be understood as a requirement for the servicer and veteran to sign the agreement in writing. Servicers who have interpreted VA's current regulations in such manner have indicated that this leads to additional time and costs to prepare and execute VA loss-mitigation agreements.

VA's main concern is that there is an audit trail of the acceptance of the agreement between the servicer and the veteran, not that the agreement remain restricted to outmoded methods of memorializing agreements. VA simply requires that evidence of the agreement between the parties be presented to VA in written form, such as documentation through email or mobile application (with e-signatures, such as DocuSign), or during a recorded phone call (agreed verbally, then documented in a letter/notice, and later acted upon).

Therefore, VA is proposing to clarify VA's expectations regarding the establishment of these agreements. The proposed changes would more clearly provide servicers and veterans flexibility in utilizing industry-prevalent technologies to establish loss-mitigation agreements.

More specifically, VA proposes to remove references to ''a written executed agreement'' and ''written agreement'' in the definitions of ''repayment plan'' and ''special forbearance,'' respectively, in § 36.4301 and add in those places ''a documented agreement.'' Additionally, in the definition of ''repayment plan,'' VA proposes to make minor grammatical edits so that the text is consistent with the framework for the definition of ''special forbearance.'' In § 36.4315(a), Loan modifications, VA proposes to remove the reference to a ''written agreement'' and add in its place ''a documented agreement.''

In § 36.4316(b)(2) through (4), VA proposes to remove the references to ''documented'' as this term would be incorporated into the definition of ''repayment plan'' under this proposed rule. VA also proposes to remove the term ''written'' in § 36.4316(b)(6) in reference to a repayment plan.

In § 36.4317(c)(18), VA proposes to remove the term ''agreement'' when

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CFR 36.4800 through 36.4393 (the ''36.4800 series''). See 72 FR 30505. On February 1, 2008 (73 FR 6294), VA published a final rule establishing the 36.4800 series, including 38 CFR 36.4816, which contained the proposed amendments to then-existing 38 CFR 36.4315. On June 15, 2010 (75 FR 33704), VA redesignated the 36.4800 series to replace the 36.4300 series in its entirety. Thus, 38 CFR 36.4315 became 38 CFR 36.4816, which became 38 CFR 36.4316.

[3] See 38 CFR 36.4301 (definitions of ''repayment plan'' and ''special forbearance''); see also 38 CFR 36.4315, 36.4316(b)(6).

[4] National Association of Realtors, *Short Sales & Foreclosures, https://www.nar.realtor/short-sales-foreclosures* (last visited Jan. 4, 2023) (''A short sale is a transaction in which the lender, or lenders, agree to accept less than the mortgage amount owed by the current homeowner. In some cases, the difference is forgiven by the lender, and in others the homeowner must make arrangements with the lender to settle the remainder of the debt.'').

[5] See, *e.g.,* 38 CFR 36.4303(l)(1)(i)(B), 36.4353(b)(2)(v).

[6] Black's Law Dictionary (11th ed. 2019) (noting the definition of purchase as ''[t]he acquisition of an interest in real or personal property by sale, discount, negotiation, mortgage, pledge, lien, issue, reissue, gift, or any other voluntary transaction'').

referencing a ''special forbearance'' as this term, by the proposed definition, would be an agreement. For similar reason, in § 36.4319(a), VA proposes to remove the term ''special forbearance agreements'' and add in its place ''special forbearances.''

D. Technical Amendment To Update Information Collection Reference

Finally, VA proposes to use this rule as an opportunity to correct an outdated reference to an approved information collection in § 36.4320. Currently, § 36.4320 states the Office of Management and Budget (OMB) has approved the information collection requirements in this section under control number 2900–0362. However, in 2010, VA submitted to OMB a request to incorporate the information collected in § 36.4320 (specifically, VA Form 26–1874, Claim Under Loan Guaranty, and VA Form 26–1874a, Claim Form Addendum—Adjustable Rate Mortgages), into another information collection under OMB control number 2900–0021.[7] VA's request was approved in March 2011, and the information collection remains active. VA, therefore, proposes to update the OMB control number to 2900–0021.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) 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). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

[7] See 75 FR 17832 (Apr. 7, 2010); 75 FR 33898 (June 15, 2010).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). However, this rulemaking would have a direct impact on a number of industries that service VA loans. VA defines a servicer as a mortgage company that collects funds for a debt incurred by a borrower to purchase a home. When a loan becomes delinquent after a borrower misses one or more mortgage payments, servicers are responsible for servicing delinquent loans and working with the borrower to reach an agreement that will bring the loan current or avoid foreclosure whenever feasible.

A recent analysis indicated there are currently 450 servicers in varying industries that will be impacted by this rulemaking. This proposed rule would impose a one-time rule familiarization cost to servicers in 2024, estimated at $55.91 per servicer regardless of size. The $55.91 cost is derived by dividing the cost of rule familiarization, which is estimated to be $25,157, by the 450 servicers VA currently works with. To estimate the one-time rule familiarization cost, VA multiplies the number of servicers by the time needed for in-house or retained legal counsel to review and ensure compliance with the rule and their compensation rate. VA assumes that it would take 30 minutes for a lawyer to review the rulemaking. The compensation rate of the lawyers is estimated by multiplying their hourly wage rate ($78.74) by the fringe benefits factor, 1.42. Multiplying the number of servicers (450) by the time to review the rule (30 minutes) and their total compensation rate ($111.81 per hour) results in a one-time total cost of $25,157 in FY2024. This one-time cost in FY2024 is offset by the long-term cost savings of this rulemaking from reduced agreement preparation and sharing efforts.

VA considers a rulemaking to have a ''significant economic impact'' when the impact associated with the rulemaking for a small entity equals or exceeds 1 percent of annual revenue. Thus, this rulemaking is not expected to have a significant economic impact on the participating small servicers. After the first year of implementation, there will be a monetary benefit realized by servicers due to the reduction in burden this rulemaking will accomplish. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Although this proposed rule contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collections of information for 38 CFR 36.4317, 36.4319, and 36.4320 are currently approved by OMB and have been assigned OMB control number 2900–0021.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on June 23, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

■ 1. The authority citation for part 36, subpart B continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

■ 2. Amend § 36.4301 by:
■ a. Removing the definition of ''Compromise sale'';
■ b. Revising the third sentence of ''Liquidation sale'';
■ c. Revising the definition of ''Repayment plan'';
■ d. Adding, in alphabetical order, the definition for ''Short sale''; and
■ e. Revising the definition of ''Special forbearance''.

The revisions and addition read as follows:

§ 36.4301 Definitions.

* * * * *

Liquidation sale. * * * This term also includes a short sale.

* * * * *

Repayment plan. This is a documented agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

* * * * *

Short sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

Special forbearance. This is a documented agreement executed by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

* * * * *

§ 36.4315 [Amended]

■ 3. Amend § 36.4315(a) by removing ''written'' and adding in its place ''a documented''.

§ 36.4316 [Amended]

■ 4. Amend § 36.4316 by:
■ a. Removing ''documented'' in paragraphs (b)(2), (3), and (4); and
■ b. Removing ''written'' in paragraph (b)(6).

■ 5. Amend § 36.4317 by:

■ a. Removing ''agreement'' in paragraph (c)(18);

■ b. Removing ''Compromise sale'' and ''compromise sale'' and adding ''Short sale'' and ''short sale'', respectively, in paragraph (c)(21); and

■ c. Revising paragraphs (c)(30) and (31).

The revisions read as follows:

§ 36.4317 Servicer reporting requirements.

* * * * *

(c) * * *

(30) Basic claim information—when the servicer files a claim under guaranty. The servicer shall report this event within 365 calendar days of loan termination for non-VA purchase claims, and within 60 calendar days of the approval date for VA purchase claims.

(31) VA purchase settlement—when VA purchases a loan and the servicer reports the tax and insurance information. The servicer shall report this event within 60 calendar days of the VA purchase approval date.

* * * * *

§ 36.4319 [Amended]

■ 6. Amend § 36.4319 by:

■ a. Removing ''special forbearance agreements'' and ''compromise sales'' and adding their place ''special forbearances'' and ''short sales'', respectively, in paragraph (a);

■ b. Removing ''Compromise Sale'' and adding in its place ''Short Sale'' in the table in paragraph (b); and

■ c. Removing ''compromise sale'' and adding in its place ''short sale'' in paragraph (c)(4).

§ 36.4320 [Amended]

■ 7. Amend § 36.4320 by:

■ a. Removing ''Refunding'' and adding in its place ''VA purchase'' in the heading;

■ b. Removing ''refund'' and adding in its place ''purchase'' in paragraph (c); and

■ c. Removing ''2900–0362'' and adding in its place ''2900–0021'' in the parenthesis at the end of the section.

§ 36.4322 [Amended]

■ 8. Amend §§ 36.4322(e)(1), (1)(ii), (2), and (f)(1)(iii) by removing ''compromise sale'' each place it appears and adding ''short sale'' in its place.

[FR Doc. 2023–14478 Filed 7–19–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0889; FRL–10441–01–R9]

Limited Approval, Limited Disapproval of California Air Plan Revisions, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD or ''the District'') portion of the California State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions from all sources of air pollution emissions in the District. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 21, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–EPA–R09–OAR–2022–0889 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 disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:
Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4125 or by email at *vineyard.christine@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 rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
MDAQMD	401	Visible Emissions	08/26/19	01/08/21

On July 8, 2021, the submittal for MDAQMD Rule 401 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are previous versions of Rule 401 in the SIP adopted by the MDAQMD's predecessor agencies. The San Bernardino County portion of MDAQMD adopted a version of Rule 401, Visible Emissions, on May 7, 1976, and CARB submitted it to us on June 6, 1977. We approved this version of the rule on September 8, 1978 (43 FR 40011). The Riverside County (Blythe/Palo Verde Valley) portion of the MDAQMD adopted a version of Rule 401, Visible Emissions, on March 2, 1984, and CARB submitted it to us on July 10, 1984. We approved this version of the rule on January 29, 1985 (50 FR 3906). The MDAQMD adopted revisions to the SIP-approved versions on August 26, 2019, and CARB submitted them to us on January 8, 2021. We consider the January 8, 2021 submittal to supersede the earlier submittals. While we can act on only the most recently submitted version of the rule, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule revisions?

Emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions. Rule 401 provides limits for visible emissions from all sources of air pollution emissions in the district. The MDAQMD amended Rule 401 to be consistent with the applicable California Health & Safety Code provisions already enforced. The EPA's technical support documents (TSD) has more information about this rulemaking.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM_{10} nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The MDAQMD regulates a PM_{10} nonattainment area classified as Moderate for the PM standard (40 CFR 81.305). An evaluation of RACM and RACT is generally performed in context of a broader plan.

Guidance and policy documents that we use to evaluate enforceability, revision relaxation, and rule stringency requirements for the applicable criteria pollutants 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 "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region IX, August 21, 2001 (the Little Bluebook).
4. "PM–10 Guideline Document," EPA 452/R–93–008, April 1993.
5. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2–92–004, September 1992.

B. Does the rule meet the evaluation criteria?

Rule 401 improves the SIP by establishing equipment-specific visible emissions limits and by clarifying applicability and test methods for compliance verification. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

These provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision:

1. An exemption for visible emissions resulting from an equipment breakdown in accordance with District Rule 430, Breakdown Provisions. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

2. An exemption for emissions from vessels during a breakdown condition, as long as the discharge is reported in accordance with District requirements. Again, this exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

3. An exemption for agricultural operations necessary for the growing of crops or raising of fowl or animals. This is an overly broad agricultural exemption.

4. An exemption for vessels using steam boilers during emergency shutdowns for safety reasons and operational tests. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

5. An exemption for smoke emissions from tepee burners during the disposal of forestry and agricultural residue when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

6. An exemption for smoke emissions from burners used to produce energy and fired by forestry and agricultural residues with supplementary fossil fuels when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

D. EPA Recommendations to Further Improve the Rule

The TSD includes recommendations for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule. We will accept comments from the public on this proposal until August 21, 2023. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval.

In addition, final 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.

Note that the submitted rule has been adopted by the MDAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992, EPA memo found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

III. Incorporation by Reference

In this rulemaking, 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 Mojave Desert Air Quality Management District Rule 401, Visible Emissions, adopted on August 26, 2019, which regulates particulate matter from all sources in the district as discussed in section I. of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(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 is proposing a limited approval and limited disapproval of state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

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. Therefore, this action is not subject to Executive Order 13045 because it is merely proposing a limited approval and limited disapproval of state law as meeting Federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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, 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.''

The State 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. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting, and recordkeeping requirements.

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

Dated: July 13, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–15443 Filed 7–19–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2023–0245; FRL–10985–03–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (23–2.5e); Extension of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule entitled ''Significant New Use Rules on Certain Chemical Substances (23–2.5e)'' that published in the **Federal Register** on June 20, 2023, with an established public comment period that was scheduled to end on July 20, 2023. In response to requests for additional time to develop and submit comments on the proposed rule, EPA is extending the comment period for an additional 30 days, *i.e.,* from July 20, 2023, to August 19, 2023.

DATES: The comment period for the proposed rule that published on June 20, 2023, at 88 FR 39804 (FRL–10985–01–OCSPP), is now extended. Comments must be received on or before August 19, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0245, through the *Federal eRulemaking Portal at https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For 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: This document extends the public comment period established in the **Federal Register** of June 20, 2023 (88 FR 39804) (FRL–10985–01–OCSPP) for 30 days, from July 20, 2023, to August 19, 2023.

This extension is in response to requests that EPA received which asked for additional time to develop and submit comments on the proposed rule. After considering several factors, EPA believes it is appropriate to extend the comment period for 30 days to give stakeholders additional time to review the documents and prepare comments. As discussed in the **Federal Register** of June 20, 2023 (88 FR 39804 (FRL–10985–01–OCSPP)), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

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

Dated: July 17, 2023.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–15388 Filed 7–19–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 230713–0166; RTID 0648–XR118]

Endangered and Threatened Wildlife and Plants; Listing the Atlantic Humpback Dolphin as an Endangered Species Under the Endangered Species Act; Correction; Comment Period Reopening

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

ACTION: Proposed rule; correction; reopening of comment period.

SUMMARY: We, NMFS, published a proposed rule on April 7, 2023 to list the Atlantic humpback dolphin (*Sousa teuszii*) under the Endangered Species Act (ESA) in response to a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita to list the species. Following publication of this proposed rule, NMFS became aware of cartographic guidance bulletin 38, issued by the Department of State's Office of the Geographer and Global Issues on December 16, 2020, and determined that the preamble to our proposed rule was not in alignment with the guidance. This correction removes all references to the name ''Western Sahara'' from the proposed rule's preamble and identifies Morocco as a country within the species' range, per the guidance. Additionally, this correction includes changes to the ''International Regulatory Mechanisms'' subsection of the proposed rule resulting from the inclusion of Morocco as a range country for the Atlantic humpback dolphin (*S. teuszii*). We are also reopening the public comment period for the proposed rule.

DATES: The comment period for the proposed rule published on April 7, 2023 (88 FR 20829) is reopened. The comment period is reopened from July 20, 2023 to September 18, 2023. Comments must be received by September 18, 2023. Comments received after this date may not be accepted.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0110, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0110 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), 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).

NMFS will consider all public comments that were previously submitted in response to the proposed rule as it was originally published on April 7, 2023 when drafting the final rule. Although there is no need to resubmit prior comments, commenters may submit new comments during the reopened comment period.

The petition, status review report, **Federal Register** notices, and the list of references can be accessed electronically online at: *https://www.fisheries.noaa.gov/species/atlantic-humpback-dolphin#conservation-management.* The peer review report is available online at: *https://www.noaa.gov/information-technology/endangered-species-act-status-review-report-atlantic-humpback-dolphin-sousa-teuszii-id447.*

FOR FURTHER INFORMATION CONTACT: Heather Austin, NMFS Office of Protected Resources, *Heather.Austin@noaa.gov,* 301–427–8422.

SUPPLEMENTARY INFORMATION: As described above, our notice of proposed rulemaking published on April 7, 2023 (88 FR 20829), FR Doc 2023–07286, contained inadvertent errors that need to be corrected to align with cartographic guidance bulletin 38. We identify these errors below by reference to the page in the April 7, 2023 **Federal Register** where the errors occurred. This document provides corrected text for each of those errors.

Further, in accordance with 50 CFR 424.16(c)(2), NMFS finds that bringing the preamble to our proposed rule to list the Atlantic humpback dolphin into alignment with the guidance bulletin presents good cause for reopening the public comment period. Reopening the public comment period will allow the Kingdom of Morocco, as well as any other interested person, an opportunity to provide comments on this proposal.

Corrections

1. On page 20831, in the second column, in the first paragraph of the ''Range, Distribution, and Habitat Use'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence describing the range of the species.

''The Atlantic humpback dolphin is considered an obligate shallow water dolphin that is endemic to the tropical and subtropical eastern Atlantic nearshore waters (<30 m) of the west coast of Africa, ranging discontinuously for approximately 7,000 km from Dakhla Bay (Rio de Oro) in Western Sahara (23°52′ N, 15°47′ W) to Tômbwa (Namibe Province) in Angola (15°46′ S, 11°46′ E) (International Whaling Commission 2011; Collins 2015; Weir and Collins 2015; International Whaling Commission 2017; International Whaling Commission 2020b; Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 on page 20831 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The text ''Western Sahara'' in the aforementioned sentence is corrected to read ''Morocco'' to identify Morocco as the northernmost country within the species range. Corrected text follows:

''The Atlantic humpback dolphin is considered an obligate shallow water dolphin that is endemic to the tropical and subtropical eastern Atlantic nearshore waters (<30 m) of the west coast of Africa, ranging discontinuously for approximately 7,000 km from Dakhla Bay (Rio de Oro) in Morocco (23°52′ N, 15°47′ W) to Tômbwa (Namibe Province) in Angola (15°46′ S, 11°46′ E) (International Whaling Commission 2011; Collins 2015; Weir and Collins 2015; International Whaling Commission 2017; International Whaling Commission 2020b; Austin 2023).''

2. On page 20831, in the third column, the second full sentence in the second paragraph of the ''Range, Distribution, and Habitat Use''

subsection, NMFS inadvertently referred to ''Western Sahara'' within the following paragraph discussing the range and distribution of the species.

''This species is the only member of the genus that occurs outside of the Indo-Pacific region (Mendez *et al.* 2013; Jefferson and Rosenbaum 2014; Collins 2015). Although each of the 19 countries between (and including) Western Sahara and Angola are presumed to be part of the species' natural range, the current distribution is uncertain due to incomplete research coverage, including an absence of survey effort in many areas.''

Thus, in proposed rule FR Doc 2023–07286 at 88 FR 20829 on page 20831 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The aforementioned paragraph is corrected to identify Morocco as a country within the species range. Corrected text follows:

''This species is the only member of the genus that occurs outside of the Indo-Pacific region (Mendez *et al.* 2013; Jefferson and Rosenbaum 2014; Collins 2015). Although each of the 19 countries between (and including) Morocco and Angola are presumed to be part of the species' natural range, the current distribution is uncertain due to incomplete research coverage, including an absence of survey effort in many areas.''

3. On page 20831, in the third column, the third full sentence in the second paragraph of the ''Range, Distribution, and Habitat Use'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence discussing confirmed records of occurrence of the species.

''Currently, there are confirmed records of occurrence (confirmed via sightings, strandings, and bycatch data) in the following 13 countries: Western Sahara, Mauritania, Senegal, The Gambia, Guinea-Bissau, Guinea, Togo, Benin, Nigeria, Cameroon, Gabon, Republic of the Congo, and Angola (Ayissi *et al.* 2014; Weir and Collins 2015; Van Waerebeek *et al.* 2017; CCAHD 2020; Bamy *et al.* 2021, Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20831 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The aforementioned sentence is corrected to identify Morocco as a country with confirmed records of occurrence of the species. Corrected text follows:

''Currently, there are confirmed records of occurrence (confirmed via sightings, strandings, and bycatch data) in the following 13 countries: Morocco, Mauritania, Senegal, The Gambia, Guinea-Bissau, Guinea, Togo, Benin, Nigeria, Cameroon, Gabon, Republic of the Congo, and Angola (Ayissi *et al.* 2014; Weir and Collins 2015; Van Waerebeek *et al.* 2017; CCAHD 2020; Bamy *et al.* 2021, Austin 2023).''

4. On page 20833, in the second column, in the final paragraph of the ''Social Behavior'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence discussing locations of observations of mixed-species associations between Atlantic humpback dolphins and bottlenose dolphins (*Tursiops truncatus*).

''Mixed-species associations between Atlantic humpback dolphins and bottlenose dolphins (*Tursiops truncatus*) have been observed in Western Sahara, Mauritania, Senegal, Guinea-Bissau, Gabon, the Republic of the Congo, and Angola (Weir 2009; Weir 2011; Leeney *et al.* 2016).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20833 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The aforementioned sentence is corrected to identify Morocco as a country where observations of mixed-species associations between Atlantic humpback dolphins and bottlenose dolphins have occurred. Corrected text follows:

''Mixed-species associations between Atlantic humpback dolphins and bottlenose dolphins (*Tursiops truncatus*) have been observed in Morocco, Mauritania, Senegal, Guinea-Bissau, Gabon, the Republic of the Congo, and Angola (Weir 2009; Weir 2011; Leeney *et al.* 2016).''

5. On page 20833, in the second column, in the second paragraph of the ''Population Abundance and Trends'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence discussing the range of the species.

''Atlantic humpback dolphin populations at the northern (Dakhla Bay, Western Sahara) and southern (Namibe, Angola) extremes of the range appear to be very small (Weir 2009; Collins 2015; Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20833 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The aforementioned sentence is corrected to identify Morocco as the northernmost country within the species range. Corrected text follows:

''Atlantic humpback dolphin populations at the northern (Dakhla Bay, Morocco) and southern (Namibe, Angola) extremes of the range appear to be very small (Weir 2009; Collins 2015; Austin 2023).''

6. On page 20835, in the third column, in the first paragraph of the ''Spatial Structure and Connectivity'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence discussing the distribution and range of the species.

''The Atlantic humpback dolphin has a restricted range and fragmented distribution, being a shallow water dolphin endemic to (sub)tropical nearshore waters along the Atlantic coast of Africa, ranging discontinuously for approximately 7,000 km from Western Sahara in the north to Angola in the south (Collins 2015; Weir and Collins 2015; Collins *et al.* 2017).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20835 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The aforementioned sentence is corrected to identify Morocco as the northernmost country within the species range. Corrected text follows:

''The Atlantic humpback dolphin has a restricted range and fragmented distribution, being a shallow water dolphin endemic to (sub)tropical nearshore waters along the Atlantic coast of Africa, ranging discontinuously for approximately 7,000 km from Morocco in the north to Angola in the south (Collins 2015; Weir and Collins 2015; Collins *et al.* 2017).''

7. On page 20836, in the third column, the second full sentence in the second paragraph of the ''The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range'' subsection, NMFS inadvertently referred to ''Western Sahara'' within the following sentence discussing the range of the species.

''Additionally, the species has a restricted geographic range, being endemic to the tropical and subtropical nearshore waters along the Atlantic African coast from Western Sahara in the north to the southern region of Angola (Van Waerebeek *et al.* 2004; Collins 2015; Weir and Collins 2015).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 beginning on page 20836 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic

guidance bulletin 38. The aforementioned sentence is corrected to identify Morocco as the northernmost country within the species range. Corrected text follows:

''Additionally, the species has a restricted geographic range, being endemic to the tropical and subtropical nearshore waters along the Atlantic African coast from Morocco in the north to the southern region of Angola (Van Waerebeek *et al.* 2004; Collins 2015; Weir and Collins 2015).''

8. On page 20840, in the second column, in the first paragraph of the ''International Regulatory Mechanisms'' subsection, NMFS inadvertently included ''Western Sahara'' within the following paragraph discussing parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention).

''The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) is an environmental treaty of the United Nations that aims to conserve migratory species, their habitats, and their migration routes. CMS establishes obligations for each state joining the convention, promotes collaboration among range states, and provides the legal foundation for coordinating international conservation measures throughout a migratory range. Early recognition of the vulnerability of the Sousa species was indicated by their inclusion on the CMS Appendix II in 1991 (Weir *et al.* 2021) and on Appendix I in 2009, thereby obligating parties to work regionally to promote their conservation. Parties include all countries that are in the Atlantic humpback dolphin's range except for Sierra Leone and Western Sahara (Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20840 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. The text ''Western Sahara'' in the aforementioned paragraph is deleted. Corrected text follows:

''The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) is an environmental treaty of the United Nations that aims to conserve migratory species, their habitats, and their migration routes. CMS establishes obligations for each state joining the convention, promotes collaboration among range states, and provides the legal foundation for coordinating international conservation measures throughout a migratory range. Early recognition of the vulnerability of the Sousa species was indicated by their inclusion on the CMS Appendix II in 1991 (Weir *et al.* 2021) and on Appendix I in 2009, thereby obligating parties to work regionally to promote their conservation. Parties include all countries that are in the Atlantic humpback dolphin's range except for Sierra Leone (Austin 2023).''

9. On page 20840, in the second column, in the first paragraph of the ''International Regulatory Mechanisms'' subsection, NMFS inadvertently included ''Western Sahara'' in its calculation of the number of parties to CMS within the following sentence.

''However, while 17 out of the 19 range countries of *S. teuszii* are parties to CMS, conservation of the Atlantic humpback dolphin is often not a high priority for governments of range countries, despite the efforts of the CMS's National Focal Points to promote the issue.''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20840 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. Morocco is now included as a range country for the species and in the calculation of how many countries along the west coast of Africa are a party to CMS. With Western Sahara removed from this calculation, the number of range countries that are parties to CMS increases from 17 to 18. Corrected text follows:

''However, while 18 out of the 19 range countries of *S. teuszii* are parties to CMS, conservation of the Atlantic humpback dolphin is often not a high priority for governments of range countries, despite the efforts of the CMS's National Focal Points to promote the issue.''

10. On page 20841, in the first column, in the last paragraph, NMFS inadvertently included ''Western Sahara'' in its calculation of the number of parties to the Convention on Wetlands within the following paragraph.

''The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty, which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. As of October 2021, there are 172 parties, which includes 18 out of 19 range countries of *S. teuszii* and 2,347 designated sites (Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20841 in the **Federal Register** issue of April 7, 2023, the following corrections are made to align with cartographic guidance bulletin 38. Morocco is now included as a range country for the species and in the calculation of how many countries along the west coast of Africa are a party to the Convention on Wetlands, making all 19 of the species range countries a party to this Convention in the following paragraph. Corrected text follows:

''The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty, which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. As of October 2021, there are 172 parties, which includes all 19 range countries of *S. teuszii* and 2,347 designated sites (Austin 2023).''

11. On page 20841, in the second column, in the first paragraph of the ''Regional Regulatory Mechanisms'' subsection, NMFS did not include Morocco as range country for the species within the list of countries that have ratified the Abidjan Convention. Additionally, Morocco was not included in the subsequent calculation of how many countries along the west coast of Africa have ratified the Abidjan Convention in the following sentence.

''The contracting parties that have ratified the Abidjan Convention are: Benin, Cameroon, Republic of the Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Nigeria, Senegal, Sierra Leone, South Africa and Togo, which includes 15 out of the 19 range countries of *S. teuszii* (Austin 2023)''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20841 in the **Federal Register** issue of April 7, 2023, the following correction is made to align with cartographic guidance bulletin 38. Morocco is now included as a range country for the species and as a contracting party that has ratified the Abidjan Convention. Accordingly, Morocco is included in the subsequent calculation of how many countries along the west coast of Africa have ratified the Abidjan Convention, increasing the number from 15 to 16. Corrected text follows:

''The contracting parties that have ratified the Abidjan Convention are: Benin, Cameroon, Republic of the Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Morocco, Nigeria, Senegal, Sierra Leone, South Africa and Togo, which includes 16 out of the 19 range countries of *S. teuszii* (Austin 2023)''.

12. On page 20841, in the second column, in the first paragraph of the ''Regional Regulatory Mechanisms'' subsection, NMFS inadvertently referred to ''Western Sahara''.

''The remaining 4 range countries including Angola, Democratic Republic of the Congo, and Equatorial Guinea are located in the Abidjan Convention area but have not yet ratified the convention; and Western Sahara is not a signatory of the Abidjan Convention (Austin 2023).''

Thus, in proposed rule FR Doc. 2023–07286 at 88 FR 20829 on page 20841 in the **Federal Register** issue of April 7, 2023, the following corrections are made to align with cartographic guidance bulletin 38. Morocco is now included as a range country for the species and identified as a contracting party that has ratified the Abidjan Convention. This results in 3 range countries (Angola, Democratic Republic of the Congo, and Equatorial Guinea) that are located in the Abidjan Convention area but have not yet ratified the Convention. Corrected text follows:

''The remaining 3 range countries including Angola, Democratic Republic of the Congo, and Equatorial Guinea are located in the Abidjan Convention area but have not yet ratified the Convention (Austin 2023)''.

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

Dated: July 17, 2023.

Kimberly Damon-Randall,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–15397 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 138
Thursday, July 20, 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–2023–0038]

Notice of Request for Extension of Approval of an Information Collection; APHIS Pest Reporting and Asian Longhorn Beetle Program

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 (APHIS') intention to request an extension of approval of an information collection associated with the reporting of plant pests and diseases, and APHIS conducting Asian Longhorn Beetle Program activities.

DATES: We will consider all comments that we receive on or before September 18, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Enter APHIS–2023–0038 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2023–0038, 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 *http://www.regulations.gov* or in our reading room, which is 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 pest reporting and Asian Longhorn Beetle Program activities, contact Ms. Kathryn Bronsky, National Policy Manager, PPQ APHIS, 4700 River Road, Riverdale, MD 20737–1231; (301) 851–2147; email *kathryn.e.bronsky@usda.gov.* For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: APHIS Pest Reporting and Asian Longhorn Beetle Program.

OMB Control Number: 0579–0311.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS), either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and diseases that are new to or not widely distributed within the United States. This authority allows APHIS to establish control programs for a number of pests and diseases of concern, including Asian longhorned beetle and citrus greening, to name a few.

APHIS relies on various entities, such as individuals, households, businesses, and State departments of agriculture to report sightings of pests of concern or suspicious signs of pest or disease damage they may see in their local areas and provide information needed to conduct Asian Longhorned Beetle Program activities. This reporting, and the detection and verification methods involved, include information collection activities that include online pest reporting; cooperative agreements for inspection; State compliance training workshop recordkeeping; inspections and Asian longhorned beetle unified surveys; contracts for inspection; litigation and warrants and associated letters; homeowner permission or refusal to inspect and agreements for treatment, removal, and monitoring or disposal; and certificate/permit cancellation.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(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 0.13 hours per response.

Respondents: State plant health officials, business, individuals, and households.

Estimated annual number of respondents: 16,308.

Estimated annual number of responses per respondent: 40.

Estimated annual number of responses: 644,139.

Estimated total annual burden on respondents: 85,974 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 13th day of July 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–15399 Filed 7–19–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–CF–0020]

Announcement of the Availability of Community Facilities Program Disaster Repair Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) mission area of the United States Department of Agriculture (USDA), announces the availability of up to $50 million in grant funding through its Community Facilities Program (CF) to repair Essential community facilities damaged by Presidentially Declared Disasters in Calendar Year (CY) 2022, to remain available until expended. The supplemental disaster grant funding was received under the Consolidated Appropriations Act, 2023.

DATES: Applications for the Community Facilities Disaster Repair Grant Program will be accepted on a continual basis by the applicable USDA RD Office (see **ADDRESSES** section for details), beginning on July 20, 2023, until funds are expended. Interested applicants must contact the RD Office for the state where the project is located to discuss potential projects prior to preparing their application and to connect with a technical assistance provider.

ADDRESSES: This funding opportunity will be made available for informational purposes on *Grants.gov*. Applications must be submitted to the USDA RD State Office for the state where the project is located. Application information may be submitted in paper or electronic format to the appropriate RD State Office and will be accepted on a continual basis.

Applicants must contact their respective RD State Office for information on grant eligibility, the application process, and for an address to submit application information. A list of the USDA RD State Office contacts can be found at: *https://www.rd.usda.gov/about-rd/state-offices.*

FOR FURTHER INFORMATION CONTACT: Surabhi Dabir at *Surabhi.dabir@usda.gov,* Community Facilities Program, RHS, USDA or call 202–768–5875. Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice); or the Federal Relay Service at 711 Relay Service.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: Rural Housing Service (RHS), USDA.

Funding Opportunity Title: Announcement of the Availability of Community Facilities Program Disaster Repair Grants.

Announcement Type: Notice of Funding Opportunity (NOFO).

Funding Opportunity Number: USDA–RHS–CFDG–2023.

Assistance Listing: 10.766.

Dates: Applications for the Community Facilities Disaster Repair Grant Program will be accepted on a continual basis by the USDA RD Office for the state where the project is located (see **ADDRESSES** section for details), beginning on July 20, 2023, until all funds are expended. Interested applicants must contact the RD Office for the state where the project is located to discuss potential projects prior to preparing their application and to connect with a technical assistance provider.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. Purpose of the Program

CF offers direct loans, loan guarantees and grants to develop or improve essential public services and facilities in communities across rural America. Public bodies, non-profit organizations and federally recognized American Indian Tribes can use the funds to construct, expand or improve facilities that provide health care, education, public safety, and public services. Projects include fire and rescue stations, village and town halls, health care clinics, hospitals, adult and childcare centers, assisted living facilities, rehabilitation centers, public buildings, schools, libraries, and many other community-based initiatives.

This NOFO is being issued pursuant to the disaster funds made available by the Disaster Relief Supplemental Appropriations Act, 2023. Grants will be provided to eligible applicants to repair eligible Essential community facilities damaged by Presidentially Declared Disasters that occurred in CY 2022. Subject to any updates to the Presidentially Declared Disasters, the following states have been identified with areas that have been impacted by qualifying events during CY 2022: Alaska, American Samoa, Arizona, California, Florida, Idaho, Illinois, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Vermont, Virginia, Washington, and West Virginia. For the most current list of Presidentially Declared Disasters, visit the United States (U.S.) Department of Homeland Security, Federal Emergency Management Agency (FEMA) website at *https://www.fema.gov/disaster/declarations.*

Details on eligible CF applicants and eligible CF projects may be found in Section C. Eligibility Information below.

Funds will be allocated to the USDA Rural State Offices in States impacted by Presidentially declared disasters occurring in CY 2022. The allocation of funds will be based on an adaptation of 7 CFR 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds to incorporate the impact of the disasters.

2. Statutory and Regulatory Authority

The Community Facilities Disaster Repair Grant Program is authorized under Division N—Disaster Relief Supplemental Appropriations Act, 2023 of the Consolidated Appropriations Act, 2023, (Pub. L. 117–328); 7 U.S.C. 1926(a)(19); The Consolidated Farm and Rural Development Act as amended; 5 U.S.C. 301; and implemented by 2 CFR parts 200 and 400, uniform Federal grant awards regulations and 7 CFR 3570, subpart B, Community Facilities Grant Program regulations.

3. Definitions

Presidentially Declared Disasters. A declaration made by the President in accordance with applicable statutes that a disaster exists, necessitating assistance in the recovery of the impacted area.

Calendar Year (CY). The period of time beginning on January 1 and ending on December 31 of each year.

All other definitions applicable to this notice are published at 7 CFR 3570.53.

4. Application of Awards

The Agency will review and evaluate applications received in response to this

notice based on the eligibility provisions found in 7 CFR 3570.61 and as indicated in this notice. For instance, applicants must be organized as a Public body, community-based Nonprofit corporation or association, or a Federally recognized Tribe. Further, the proposed project must primarily serve rural areas, be in an eligible rural area, serve a public purpose, and be unable to finance the proposed project from its own resources, or other funding resources, or through commercial credit at reasonable rates and terms without the requested grant assistance. Awards under the Community Facilities Disaster Repair Grant Program will be made on a rolling basis, providing priority to applications using specific selection criteria. Applications will be scored on a priority basis in accordance with 7 CFR 3570.67. If at any time the demand for grant funds is greater than the amount of grant funds available, a priority ranking scoring system will be used to determine which projects are funded.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: Funds available until expended.

Available Funds: Up to $50,000,000.

Award Amounts: Grants may cover up to 75 percent of total project cost. There is no minimum or maximum award amount. Applications will compete for available funding allocated to the applicable USDA RD State office.

Anticipated Award Date: Awards will be made on a continual basis after publication of this Notice. Funds remain available until expended.

Performance Period: The period of performance will be noted in the Grant Agreement and will extend for 5 years from the date of obligation of funds.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Grant.

C. Eligibility Information

1. Eligible Applicants

An eligible CF applicant must:

(a) Be one of the types of entities outlined in 7 CFR 3570.61(a);

(b) Be unable to finance the proposed project from its own resources, or through commercial credit as outlined in 7 CFR 3570.61(c); and

(c) Have the legal authority and responsibility to own, construct, operate, and maintain the proposed Facility as outlined in 7 CFR 3570.61(e).

2. Eligible Projects

An eligible CF project must:

(a) Be an eligible Facility as outlined in 7 CFR 3570.61(b);

(b) Be financially feasible as outlined in 7 CFR 3570.61(d); and

(c) Be for public use as outlined in 7 CFR 3570.61(f).

3. Eligible Uses of Funds

(a) Grant funds must be used to repair essential community facilities damaged by Presidentially declared disasters in CY 2022, including the replacement of damaged equipment or vehicles and/or the purchase of new equipment to undertake repairs to damaged facilities and for related purposes as outlined in 7 CFR 3570.62;

(b) Grant funds may not be used for purposes outlined in 7 CFR 3570.63(a);

4. Project Location Eligibility

To be eligible for CF grant funds under this Notice:

(a) The eligible CF project must be located in a rural area in a county (or a rural area of a Reservation for Indian tribes) with a disaster declaration as declared by the President of the United States;

(b) The disaster declaration must be related to the consequences of a disaster occurring in CY 2022.

(c) The Federal Emergency Management Agency (FEMA) must have provided a notice declaring the disaster.

The term rural or rural area is defined in section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(C)), as amended, as a city, town or, unincorporated area that has a population of not more than 20,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). The boundaries for unincorporated areas in determining populations will be based on the Census Designated Places (CDP). Data from the most recent decennial census of the United States currently in use by Rural Development will be used in determining population.

For information on determining if a project is located in an area with a Disaster Declaration, go to *https://www.rd.usda.gov/programs-services/community-facilities/community-facilities-program-disaster-repair-grants.*

5. Cost Sharing or Matching

The Community Facilities Disaster Repair Grant may fund up to 75 percent of the cost of repair to a damaged Facility. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. In-kind contributions are not an acceptable source of cost-sharing funds. Applicants must utilize cash contributions to fund the remaining project costs and these funds must be expended for an eligible purpose. The Community Facilities Direct Loan Program resources are also available to eligible applicants to satisfy cost sharing requirements. Applicants may request a combination of Community Facilities Direct Loan and Disaster Repair Grants in one application.

6. Other Program Requirements

Grant funds will be administered in accordance with this notice and all applicable statutory and regulatory requirements including eligibility for CF grants. Further, the Agency will consider the applicant's ability to finance the proposed project from its own resources, other funding resources, and/or through commercial credit at reasonable rates and terms.

D. Application and Submission Information

1. Address To Request Application Package

The requirements for submitting an application can be found at 7 CFR 3570.65. Applications will be processed by a USDA RD State Office. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/state-offices.* Applications will be accepted on a continual basis until funds are expended. Interested applicants must contact the RD Office for the state where the project is located to discuss potential projects prior to preparing their application and to connect with a technical assistance provider.

2. Content and Form of Application Submission

An application must contain all the required elements outlined in 7 CFR 3570.65. Applicants must meet applicable statutory and regulatory requirements including environmental, procurement, and construction requirements. The applicable RD State Office can assist applicants in understanding complete application requirements based on the scope of the proposed project. Each application must address the applicable priorities presented in 7 CFR 3570.67 for the type of funding being requested. Applications must address several factors including the population of the project location, median household income of the population served, whether the project addresses a healthcare or public safety priority, and whether the project is consistent with, and is reflected in, the State Strategic Plan.

3. System for Award Management and Unique Entity Identifier

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Applications will be accepted on a continual basis, beginning on the publication date of this Notice, until all funds are expended.

5. Intergovernmental Review

Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Applications from Federally recognized Indian Tribes are not subject to this requirement.

6. Funding Restrictions

Grant funds may not be used to fund ineligible purposes per 7 CFR 3570.63.

Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed Facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State Nonmetropolitan Median Household Income (SNMHI) (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the Facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part (15 percent or less) of the total floor space of the proposed Facility. In addition, the ineligible activity must be related to and enhance the primary purpose of the Facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies;

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2); and

(12) Grant funds must not be used for expenses that have been reimbursed from any other sources or that other sources are obligated to reimburse.

E. Application Review Information

1. Criteria

Application Review Information—Applications will be reviewed in accordance with 7 CFR 3570.70 and scored on a priority basis in accordance with 7 CFR 3570.67. If at any time the demand for grant funds is greater than the amount of grant funds available, a priority ranking scoring system will be used to determine which projects are funded. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

(1) 5,000 or less—30 points;

(2) Between 5,001 and 12,000, inclusive—20 points;

(3) Between 12,001 and 20,000, inclusive—10 points; or

(4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(1) 60 percent of the SNMHI—30 points;

(2) 70 percent of the SNMHI—20 points;

(3) 80 percent of the SNMHI—10 points; or

(4) 90 percent of the SNMHI—5 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

(1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;

(2) Project is for health care—10 points; or

(3) Project is for public safety—10 points.

(d) *Discretionary.*

The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section, in accordance with 7 CFR 3570.67(d)(1). These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective. For the purpose of this funding announcement, requirements in 7 CFR 3570.67(d)(2) do not apply.

2. Review and Selection Process

The Agency reserves the right to offer the applicant less than the grant funding requested.

Applications will be reviewed in accordance with 7 CFR 3570.70 (a)–(d) and scored on a priority basis in accordance with 7 CFR 3570.67. If at any time the demand for grant funds is greater than the amount of grant funds available, a priority ranking scoring system will be used to determine which projects are funded, in accordance with

7 CFR 3570.68. Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding, as follows:

(a) Selection of applications for further processing. The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

(1) Scoring of project and scores of other applications on hand;

(2) Funds available in the State allocation; and

(3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) Lower scoring projects.

(1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

3. Anticipated Announcement and Federal Award Dates

Applications will be reviewed and approved on a continual basis, as applications are submitted and as funding is available.

F. Federal Award Administration Information

1. Federal Award Notices

Applicants selected for funding will be provided a Letter of Conditions. Upon acceptance of the conditions, the applicant will sign and return to the processing office Forms RD 1942–46, ''Letter of Intent to Meet Conditions'', and RD 1940–1, ''Request for Obligation of Funds''. The grant is approved on the date an Agency signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is mailed to the applicant.

Prior to the disbursement of grant funds, applicants approved for funding will be required to sign an Agency approved Grant Agreement, meet any pre-disbursement conditions outlined in the Letter of Conditions, and meet the applicable Statutory or Regulatory authority for this action listed in Section A. Program Description.

In the event the application is not approved, the applicant will be notified in writing of the reasons for rejection and provided applicable review and appeal rights in accordance with 7 CFR part 11.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected to receive Community Facilities Disaster Repair Grants can be found in the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 200, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR 31.2.

3. Reporting

As outlined in the letter of conditions and grant agreement issued by the Agency, grant recipients will be required to provide performance reports and annual financial statements in accordance with 2 CFR part 200 as adopted by the Agency in 2 CFR part 400. Grant recipients will also provide performance and financial monitoring and reporting information in accordance with 2 CFR part 200, subpart D, ''Post Federal Award Requirements.''

G. Federal Awarding Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this notice.

H. Other Information

1. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with this program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0173.

2. National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

3. Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. Civil Rights

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, the Equal Credit Opportunity Act of 1974, Americans with Disabilities Act of 1990 (ADA) as amended; and Age Discrimination Act of 1975, as amended.

5. Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant

Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–15393 Filed 7–19–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Survey of Income and Program Participation (SIPP)

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed revision of the Survey of Income and Program Participation (SIPP), prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 18, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *census.sipp@census.gov.* Please reference SIPP OMB Comments in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0003, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Hyon B. Shin, Assistant Division Chief, by phone (301–763–6169) or email (*census.sipp@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the Survey of Income and Program Participation (SIPP). The SIPP is a household-based survey designed as a continuous series of national panels.

The SIPP represents the primary source of information about annual and sub-annual dynamics of income, family and household content, movement into and out of government programs, and interactions of these topics in a single, unified dataset allowing for in-depth, informed analyses. Government domestic policy formulators and evaluators depend heavily upon the information collected in the SIPP in their analyses of the distribution of income received either directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on that distribution. They also rely on the SIPP data to provide improved and expanded information on the dynamics of income and the general economic and financial situation of the U.S. population, in the context of the household situation, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted measurement of sub-annual and annual changes in these levels over time.

The SIPP is a household-based survey designed as a continuous series of national panels. Each panel features a nationally representative sample of addresses whose household members are interviewed over a multi-year period lasting approximately four years. Starting with the 2019 survey year, the Census Bureau introduced a sample design scenario of overlapping panels where new representative addresses are sampled and added to the workload each year. This means that there will be a new household sample introduced each year whose occupants will be reinterviewed over the subsequent three years, creating the overlapping sample design.

The 2024 SIPP Panel Wave 1 cases will be interviewed about the previous calendar year, 2023, as the reference period, and will proceed with annual interviewing going forward. Calendar year 2024 SIPP will also have returning Wave 4 cases from sample year 2021, returning Wave 3 cases from 2022, and Wave 2 cases from sample year 2023, each being interviewed about their experience during reference year 2023.

The overlapping panel model will provide approximately 20,000 interviewed housing units every year to give the best design for both cross-sectional and longitudinal estimates. We will continue to provide monthly and longitudinal weights where monthly weights will incorporate all the panels in the field at that time and longitudinal weights will depend on individual panels. We estimate that each household contains 2.0 people aged 15 and above, yielding approximately 40,000 person-level interviews per calendar year. Completing the SIPP interview will take approximately 50 minutes per adult on average; consequently, the total annual burden for 2024 SIPP interviews will be 33,330 hours.

The 2024 SIPP will continue to use the same interviewing method as previous SIPP Panels, in which adults (aged 15 years and older) who move from the prior wave household will be followed. Consequently, future waves will incorporate data collected from the prior wave interview brought forward to the current interview as a way to reduce respondent burden and improve data quality.

The Census Bureau also plans to continue to use Computer Audio-Recorded Interview (CARI) technology as part of the SIPP interviewing process. CARI is a tool used during data collection to capture audio along with response data. After an introduction that notifies respondents that the interview may be recorded for quality assurance, a portion of each interview is recorded unobtrusively, and both the sound file and screen images are returned with the response data to Census Headquarters for evaluation. Census staff may review the recorded portions of the interview to improve questionnaire design and for quality assurance purposes.

The SIPP questionnaire uses an Event History Calendar (EHC) that facilitates

the collection of dates of events and spells of coverage. The EHC is a tool to assist the respondent's ability to recall events accurately to the beginning of the reference period and provide increased data quality and inter-topic consistency for dates reported by respondents. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using events from one topic as triggers to recall additional details and the timing in other topics.

SIPP is seeking clearance to make the following changes:

- Revised questionnaire content—The 2024 SIPP questionnaire removes some latent COVID–19 pandemic content that are no longer relevant. The questionnaire also updates some questions for better clarity and to reduce respondent burden. SIPP is also updating the retirement lump-sum content and medical- and jointly-held-debts section based on cognitive testing. The final set of proposed new and modified content will be included in the full OMB ICR for the 2024 SIPP.
- Reduction in Sample—The SIPP overlapping panels began with the 2018 SIPP. From 2018 through 2022, SIPP sent a list of approximately 53,000 designated housing units to be interviewed in the field each year, including new panel sample cases. Starting in 2023, SIPP reduced that number from 53,000 to approximately 35,000 housing units in the annual sample. The new 2024 panel size is 35,000 housing units minus the total of eligible housing units from earlier panels.

II. Method of Collection

The SIPP uses the Computer-Assisted Personal Interviewing (CAPI) method of data collection. The household interview collects one interview per person per year. Each interview will reference a period that begins with the beginning of the reference period and extends to the interview month of the current year. A field representative will conduct the interview in person with all household members 15 years old or over, using regular proxy-respondent rules. Children under 15 years old have information collected by proxy interviews with the household respondent. In the instances where the residence is not accessible or the respondent makes a request, the field representative will conduct the interview by telephone.

III. Data

OMB Control Number: 0607–1000.

Form Number(s): SIPP CAPI Automated Instrument.

Type of Review: Regular submission. This is a revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 40,000.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 33,330.

Estimated Total Annual Cost to Public: $0 There are no costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 182.

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. 2023–15442 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2145]

Approval of Subzone Expansion; Cheniere Energy, Inc.; Portland, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application to the Board for an expansion of Subzone 122X on behalf of Cheniere Energy, Inc., located in Portland, Texas (FTZ Docket B–15–2023, docketed March 1, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (88 FR 14117, March 7, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 122X on behalf of Cheniere Energy, Inc., located in Portland, Texas, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: July 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–15391 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2148]

Approval of Subzone Expansion; Acushnet Company; Lakeville, Massachusetts

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City of New Bedford, grantee of Foreign-Trade Zone 28, has made application to the Board to expand Subzone 28F on behalf of Acushnet Company in Lakeville, Massachusetts (FTZ Docket B–21–2023, docketed March 9, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (88 FR 15954, March 15, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the application to expand Subzone 28F on behalf of Acushnet Company in Lakeville, Massachusetts, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: July 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–15390 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–151]

Countervailing Duty Investigation of Tin Mill Products From the People's Republic of China: Preliminary Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that critical circumstances exist, in part, with respect to imports of tin mill products from one exporter/producer of tin mill products in the countervailing duty (CVD) investigation of tin mill products from the People's Republic of China (China).

DATES: Applicable July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen at (202) 482–3251 or Melissa Porpotage at (202) 482–1413; AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In response to a petition filed on January 18, 2023, Commerce initiated a CVD investigation concerning tin mill products from China.[1] On June 16, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) filed a timely allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.206, that critical circumstances exist with respect to tin mill products from China.[2] Commerce published its preliminary CVD determination on June 26, 2023.[3] In the *Preliminary Determination,* we examined two mandatory respondents and assigned the all-others rate based upon the rate assigned to the single participating mandatory respondent, Shougang Jingtang United Iron & Steel Co., Ltd. (Jingtang Iron). We applied adverse facts available (AFA) to the second mandatory respondent, Baoshan Iron & Steel Co., Ltd. (Baoshan Iron).[4]

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1) and (2)(ii), because the petitioners submitted the critical circumstances allegation more than 30 days before the scheduled date of the final determination, Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist and will issue a preliminary critical circumstances determination within 30 days after the allegation is filed.

Critical Circumstances Allegation

The petitioners allege that there was a massive increase of imports of tin mill products from China and provided monthly import data comparing a base period of November 2022 through January 2023 to a comparison period of February through April 2023.[5] This comparison shows an increase of 23.6 percent in imports from China, which is ''massive'' under 19 CFR 351.206(h)(2). The petitioners also allege that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).[6]

Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement; and (B) there have been massive imports of the subject merchandise over a relatively short period.[7] Pursuant to 19 CFR 351.206(h)(2), imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive,'' and 19 CFR 351.206(i) defines a ''relatively short period'' as normally being the period beginning on the date the proceeding

[1] *See Tin Mill Products from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 88 FR 9476 (February 14, 2023) (*Initiation Notice*).

[2] *See* Petitioners' Letter, ''Petitioners' Allegation of Critical Circumstances,'' dated June 16, 2023 (Critical Circumstances Allegation).

[3] *See Tin Mill Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 88 FR 41373 (June 26, 2023) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[4] *See Preliminary Determination* PDM at 9–10.

[5] *See* Critical Circumstances Allegation at 4–6.

[6] *See* section 771(8)(A) of the Act.

[7] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.,* those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany,* 67 FR 55808, 55809–10 (August 30, 2002).

begins (*i.e.,* the date the petition is filed) and ending at least three months later.[8] The regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[9]

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of this investigation. As determined in the *Preliminary Determination,* we found the Export Buyer's Credit Program to be export-contingent, and we applied AFA to find that the non-cooperating mandatory respondent Baoshan Iron used the following programs which the record indicates are export-contingent, rendering them inconsistent with the SCM Agreement: Export Seller's Credit; Export Buyer's Credit; Foreign Trade Development Fund Grants; Export Assistance Grants; and Subsidies for the Development of Famous Brands and China World Top Brands.[10]

Therefore, Commerce preliminarily determines, for purposes of this critical circumstances determination, that there are subsidies in this investigation that are inconsistent with the SCM Agreement.

Massive Imports

In determining whether there have been ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period''). In this case, Commerce compared the import volumes of subject merchandise, as provided by the cooperating mandatory respondent, Jingtang Iron,[11] for the four months immediately preceding and four months following the filing of the petition, ending with the month prior to the *Preliminary Determination.* Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[12]

Because the petition was filed on January 18, 2023, to determine whether there was a massive surge in imports for the cooperating mandatory respondent, Commerce compared the total volume of shipments during the period October 2022 through January 2023 with the volume of shipments during the following four-month period of February 2023 through May 2023. Based on this analysis, we preliminarily determine that there was no massive surge in imports for the cooperating mandatory respondent, Jingtang Iron.

For ''all others,'' we applied our normal practice and analyzed monthly shipment data for the same time period, using import data from Global Trade Atlas (GTA),[13] adjusted to remove the cooperating mandatory respondent's shipment data. Although the quantity of shipments reported by Jingtang Iron for one month each in the base and comparison periods was greater than the quantity of imports recorded in the GTA statistics for the U.S. Harmonized Tariff Schedule categories included in the petition for those months, we considered the data generally probative and analyzed the overall shipment data by comparing the base and comparison periods, respectively. Based on this analysis, we find that there were no massive imports for ''all other'' producers from China.

As explained in the *Preliminary Determination,* we preliminarily applied total AFA to Baoshan Iron because it failed to cooperate in this proceeding.[14] For Baoshan Iron, we preliminarily determine, in accordance with section 776(b) of the Act, that there was a massive surge in imports between the base and comparison periods.

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of tin mill products from China produced or exported by Baoshan Iron. We preliminarily determine that critical circumstances do not exist with respect to imports of tin mill products from China with respect to Jingtang Iron or all other producers.

Final Critical Circumstances Determinations

We will make a final critical circumstances determination concerning critical circumstances in the final CVD determination, which is currently scheduled for October 30, 2023.

Public Comment

A schedule for case briefs or other written comments will be established at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[16]

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established.[17]

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Baoshan Iron, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse for consumption, on or after March 28, 2023, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established in the *Preliminary Determination.* This suspension of liquidation will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to section 703(f) and 777(i) of the Act and 19 CFR 351.206.

[8] *See* 19 CFR 351.102 and 19 CFR 351.206.

[9] *See* 19 CFR 351.206(i).

[10] *See Preliminary Determination* PDM at 19 and Appendix I; *see also* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Tin Mill Products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom,'' dated January 18, 2023, at Volume X.

[11] *See* Jingtang Iron's Letter, ''Shipment Data for Critical Circumstances,'' dated July 7, 2023.

[12] *See* 19 CFR 351.206(h)(2).

[13] Commerce gathered GTA data under the following harmonized tariff schedule numbers: 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, 7212.50.0000, 7225.99.0090, 7226.99.0180.

[14] *See Preliminary Determination* PDM at 9–16.

[15] *See* 19 CFR 351.309(d)(1).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.303(b)(1).

Dated: July 14, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051, C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Final Scope Determination and Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain hardwood plywood products (hardwood plywood), completed in the Socialist Republic of Vietnam (Vietnam) using plywood inputs and components (face veneer, back veneer, and/or either an assembled core or individual core veneers) manufactured in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on hardwood plywood from China.

DATES: Applicable July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Rachel Jennings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2022, Commerce published the preliminary determination[1] for the circumvention and scope inquiries of the AD and CVD orders on hardwood plywood from China which were assembled in Vietnam using hardwood plywood inputs sourced from China.[2] We invited parties to comment on the *Preliminary Determination.* A summary of events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3] Commerce conducted this scope inquiry in accordance with 19 CFR 351.225(c) and (h), and this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act).

Scope of the Orders

The merchandise covered by the scope of these *Orders* is hardwood plywood and decorative plywood from China. A complete description of the scope of the *Orders* is contained in the Issues and Decision Memorandum.[4]

Merchandise Subject To Scope and Circumvention Inquiries

These scope and circumvention inquiries cover hardwood plywood exported to the United States that was completed in Vietnam using: (1) face/back veneers and assembled core components (*e.g.,* veneer core platforms) manufactured in China; (2) fully assembled veneer core platforms manufactured in China and face/back veneer produced in Vietnam or third countries; (3) multi-ply panels of glued core veneers manufactured in China and combined in Vietnam to produce veneer core platforms and combined with either face and/or back veneer produced in China, Vietnam, or a third country; (4) face/back veneers and individual core veneers produced in China; and (5) individual core veneers manufactured in China and processed into a veneer core platform[5] in Vietnam and combined with face/back veneer produced in Vietnam or a third country.

Methodology

Commerce made these final circumvention findings in accordance with section 781(b) of the Act and 19 CFR 351.225(g).[6] In the *Preliminary Determination,* we relied on information placed on the record by the Coalition for Fair Trade in Hardwood Plywood and the Government of Vietnam, and information we placed on the record. We also relied on the facts available under section 776(a) of the Act, including facts available with adverse inferences under section 776(b) of the Act, where appropriate. In particular, we requested information from numerous companies in Vietnam in conducting these inquiries. While we received responses from the majority of these companies, several companies failed to respond to our initial quantity and value (Q&V) questionnaire and/or a supplemental Q&V questionnaire and additional companies provided information that either contained significant discrepancies and inconsistencies or was misleading.[7] Therefore, we preliminarily found that these companies withheld information, failed to provide information by the deadline or in the form and manner requested, and significantly impeded these inquiries. Thus, we found that they failed to cooperate to the best of their abilities; thereby, we have used adverse inferences when selecting from among the facts otherwise available on the record for certain aspects of the *Preliminary Determination,* pursuant to sections 776(a) and (b) of the Act. After considering comments from interested parties, for this final determination, we have determined, based on adverse inferences, that 37 companies produce hardwood plywood under all five of the production scenarios subject to these inquiries. Additionally, we determine that these 37 companies[8] are precluded from participating in the certification program we established for applicable exports of hardwood plywood from Vietnam. For a full description of the methodology underlying the final

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[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of the Antidumping and Countervailing Duty Orders,* 87 FR 45753 (July 29, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018) (collectively, *Orders*).

[3] *See* Memorandum, ''Issues and Decision Memorandum for Circumvention and Scope Inquiries of the Antidumping Duty and Countervailing Duty Orders on Certain Hardwood Plywood Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *Id.*

[5] A veneer core platform is defined as two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.,* a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed).

[6] Commerce significantly revised its scope regulations on September 20, 2021, with an effective date of November 4, 2021. *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021). The amendments to 19 CFR 351.225 apply to scope inquiries for which a scope ruling application is filed, as well as any scope inquiry self-initiated by Commerce, on or after November 4, 2021. The newly promulgated 19 CFR 351.226 applies to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by Commerce, on or after November 4, 2021. We note that these scope and circumvention inquiries were initiated prior to the effective date of the new regulations, and, thus, any reference to the regulations is to the prior version of the regulations.

[7] *See Preliminary Determination,* 87 FR at Appendix V for a list of companies that either failed to respond to our requests for information or provided unreliable information.

[8] *Id.*

determination, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. 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.*

Final Scope Ruling

As detailed in the Issues and Decision Memorandum, we are revising the preliminary scope ruling and find that products produced under scenarios one, two, and three, are not covered by the scope of the *Orders.*

Final Affirmative Circumvention Determination

As detailed in the Issues and Decision Memorandum, we have modified the preliminary circumvention determination for this final determination. In the *Preliminary Determination,* we found products produced under scenarios four and five to be circumventing the *Orders.* For this final determination, we find that products produced under all five of the production scenarios subject to these inquiries are circumventing the *Orders.* Accordingly, we determine, pursuant to section 781(b) of the Act and 19 CFR 351.225(g), that imports of hardwood plywood completed in Vietnam are circumventing the *Orders.* Additionally, as discussed in the Issues and Decision Memorandum,[9] we are expanding the period of the ongoing administrative reviews to also include the earliest entry from Vietnam suspended as a result of our *Preliminary Determination* through December 31, 2021. We are also allowing interested parties an opportunity to request a review of their entries of hardwood plywood exported from Vietnam and entered during this expanded period of review (*i.e.,* the earliest entry from Vietnam suspended as a result of our *Preliminary Determination* through December 31, 2022). Commerce hereby notifies interested parties that requests for reviews for entries made during this period are due 14 days after the publication of this final determination in the **Federal Register** notice. We made certain changes to the certification program regarding certain companies' eligibility to participate. These changes are also discussed in the Issues and Decision Memorandum.

[9] *See* Issues and Decision Memorandum at Comment 13.

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we will instruct CBP to continue to suspend the liquidation and require a cash deposit of estimated duties, at the applicable rates, on entries that are entered, or withdrawn from warehouse, for consumption on or after June 17, 2020, the date of publication of initiation of these inquiries in the **Federal Register**.[10]

Hardwood plywood assembled in Vietnam under scenarios other than the five production scenarios identified above are not subject to these inquiries. Therefore, cash deposits are not required for such merchandise, subject to the following certification requirements.[11] The non-cooperative exporters listed in Appendix V are not eligible to participate in this certification program.[12] Accordingly, CBP shall suspend the entry and collect cash deposits for entries of merchandise produced and/or exported by these non-cooperative companies at the AD rate established for the China-wide entity (183.36 percent) and the CVD rate established for all other Chinese producers and/or exporters (22.98 percent), pursuant to the *Orders.*

In the situation where no certification is provided for an entry, Commerce intends to instruct CBP to suspend liquidation of the entry and collect cash deposits at the rates applicable under the *Orders* (*i.e.,* the AD rate established for the China-wide entity (183.36 percent) and the CVD rate established for all-other Chinese producers/exporters (22.98 percent)).[13]

Certification Requirements

If an exporter of hardwood plywood assembled in Vietnam claims that its hardwood plywood was not produced using any of the Chinese hardwood plywood input scenarios subject to these inquiries, it must prepare and maintain an exporter certification and documentation supporting the exporter certification (*see* Appendix IV). In addition, importers of such hardwood plywood must prepare and maintain an importer certification (*see* Appendix III) as well as documentation to support the importer certification. Besides the importer certification, the importer must also maintain a copy of the exporter certification (*see* Appendix IV), and relevant supporting documentation from the exporter of the hardwood plywood assembled in Vietnam that was not produced using any of the Chinese hardwood plywood input scenarios subject to these inquiries.

[10] *See Initiation Notice.*

[11] *See* Appendix II for the certification requirements and Appendix III for the importer certification.

[12] *See, e.g.,* Issues and Decision Memorandum at Comments 7–11.

[13] *See Orders.*

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: July 14, 2023.

Lisa W. Wang,

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 *Orders*
IV. Scope of the Scope and Circumvention Inquiries
V. Changes Since the *Preliminary Determination*
VI. Discussion of the Issues
Comment 1: Whether Commerce's Circumvention Inquiry Was Procedurally Flawed
Comment 2: Whether Assembly in Vietnam Is Minor or Insignificant
Comment 3: Whether Pattern of Trade Information Supports an Affirmative Determination
Comment 4: Whether There Is Record Evidence that Supports an Affirmative Determination
Comment 5: Whether Commerce Properly Rejected Untimely Filed New Factual Information (NFI)
Comment 6: Whether Commerce Properly Found Discrepancies, Errors, and Inconsistencies in Responses

Comment 7: Whether Commerce Properly Applied Adverse Facts Available (AFA) to Non-Responsive Companies
Comment 8: Whether Commerce's Reliance on AFA for Certain Companies Is Supported by Substantial Evidence
Comment 9: Whether Commerce Should Apply AFA to Cam Lam Vietnam Joint Stock Company (Cam Lam)
Comment 10: Whether Commerce Should Apply AFA to Certain Other Verified Companies
Comment 11: Whether Commerce Should Apply AFA to TL Trung Viet Company Limited (TL Trung) and VVAT Company Limited (VVAT)
Comment 12: Whether Commerce Should Revise its Customs Instructions and Certification Program to Exclude Merchandise
Comment 13: How Commerce Should Address Procedural and Equity Concerns
Comment 14: Whether Commerce Should Apply a Negative Determination to Certain Companies
Comment 15: Whether Commerce's Certification Decision Expands the Scope of these Inquiries
VII. Recommendation

Appendix II

Certification Requirements

If an importer imports certain hardwood plywood products (hardwood plywood) from Vietnam and claims that the hardwood plywood was not produced using plywood inputs and components (face veneer, back veneer, and/or either an assembled core or individual core veneers) manufactured in the People's Republic of China (China), the importer is required to complete and maintain the importer certification attached hereto as Appendix III and all supporting documentation. Where the importer uses a broker to facilitate the entry process, it should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

The exporter of such merchandise is required to complete and maintain the exporter certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation. The party that made the sale to the United States should fill out the exporter certification.

The deadline to submit certifications for unliquidated entries on or after June 17, 2020, and until August 28, 2022 is thirty days after the deadline for this final determination, *i.e.,* August 14, 2023.[14] For all such entries, exporters and importers should use the appropriate certifications provided in the appendices to the *Preliminary Determination.* As explained in the *Preliminary Determination* at Appendix II, for entries after August 28, 2022, through the date of publication of this notice in the **Federal Register**, for which certifications are required, importers should have completed the required certification at or prior to the date of entry summary, and exporters should have completed the required certification and provided it to the importer at or prior to the date of shipment. Such certifications were included as appendices to the *Preliminary Determination.*

For entries on or after the date of publication of this notice in the **Federal Register**, for which certifications are required, importers should complete the required certification at or prior to the date of entry summary, and exporters should complete the required certification and provide it to the importer at or prior to the date of shipment. Such certifications are included as appendices to this notice.

The importer and exporter are also required to maintain sufficient documentation supporting their certifications. The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer and the exporter will be required to present the certifications and supporting documentation to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications and supporting documentation for the later of: (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

In the situation where no certification is maintained for an entry, and AD/CVD orders on hardwood plywood from China potentially apply to that entry, Commerce intends to instruct CBP to continue to suspend the entry and collect cash deposits at the rate applicable under the *Orders* (*i.e.,* the AD rate established for the China-wide entity (183.36 percent) and the CVD rate established for all-other Chinese producers/exporters (22.98 percent)).

Appendix III

Importer Certification

I hereby certify that:

(A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADRESS OF IMPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hardwood plywood completed in Vietnam that entered under entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, the importer should have ''direct personal knowledge'' of the importation of the product (*e.g.,* the name of the exporter) in its records;

(C) I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the hardwood plywood inputs used to produce the imported products);

(D) This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Country of Origin of core veneers/veneered panels/veneer core platforms:

(E) The hardwood plywood completed in Vietnam was not produced under any of the production scenarios subject to these certifications:

1. Face veneer, back veneer, and assembled core components (*e.g.,* veneer core platforms (*see* note below)) manufactured in China and assembled in Vietnam;
2. Fully assembled veneer core platforms manufactured in China that are combined in Vietnam with face and/or back veneers produced in Vietnam or third countries;
3. Multi-ply panels of glued core veneers manufactured in China that are combined in Vietnam to produce veneer core platforms and combined with either a face and/or back veneer produced in China, Vietnam, or a third country;
4. Face veneer, back veneer, and individual core veneers produced in China and assembled into hardwood plywood in Vietnam; and
5. Individual core veneers manufactured in China and processed into a veneer core platform in Vietnam and combined with a face and/or back veneer produced in Vietnam or other third country.

Note: A veneer core platform is defined as two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.,* a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed).

(F) I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, production records, invoices, USDA Plant and Plant Product Declaration Form *etc.*) for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

(G) I understand that {IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);

(H) I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the

[14] *See, e.g., Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders; Extension of Deadline to Certify Certain Entries,* 87 FR 75231 (December 8, 2022).

production and/or export of the imported merchandise identified above) and supporting documentation, for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;

(I) I understand that {IMPORTING COMPANY} is required to maintain and provide a copy of the exporter's certification and supporting documentation, upon request, to CBP and/or Commerce;

(J) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

(K) I understand that failure to maintain the required certification and supporting documentation and/or failure to substantiate the claims made herein and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD)/countervailing duty (CVD) orders on hardwood plywood from China. I understand that such finding will result in:

○ suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates determined by Commerce; and

○ the revocation of {NAME OF IMPORTING COMPANY}'s privilege to certify that future imports of hardwood plywood are not produced under any of the production scenarios subject to these certifications.

(L) I understand that agents of the importer, such as brokers, are not permitted to make this certification;

(M) This certification was completed by the time of filing the entry summary; and

(N) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE}
{DATE}

Appendix IV

Exporter Certification

I hereby certify that:

(A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding the production and exportation to the Customs territory of the United States of the hardwood plywood identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have ''direct personal knowledge'' of the producer's identity and location;

(C) The hardwood plywood completed in Vietnam was not produced under any of the following production scenarios:

1. Face veneer, back veneer, and assembled core components (*e.g.,* veneer core platforms (*see* note below) manufactured in China and assembled in Vietnam;
2. Fully assembled veneer core platforms manufactured in China that are combined in Vietnam with face and/or back veneers produced in Vietnam or third countries;
3. Multi-ply panels of glued core veneers manufactured in China that are combined in Vietnam to produce veneer core platforms and combined with either a face and/or back veneer produced in China, Vietnam, or a third country;
4. Face veneer, back veneer, and individual core veneers produced in China and assembled into hardwood plywood in Vietnam; and
5. Individual core veneers manufactured in China and processed into a veneer core platform in Vietnam and combined with a face and/or back veneer produced in Vietnam or other third country.

Note: A veneer core platform is defined as two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.,* a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed).

(D) This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer Line item #:

Producer's Invoice # to Foreign Seller: (If the foreign seller and the producer are the same party, put NA here.)

Producer's Invoice # Foreign Seller: (If the foreign seller and the producer are the same party, put NA here.)

Name of core veneers/veneered panel/veneer core platform producer:

(E) The hardwood plywood products covered by this certification were shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(F) I understand that {NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, production records, invoices, *etc.*) for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

(G) I understand that {NAME OF EXPORTING COMPANY} must provide this Exporter Certification and supporting documentation to the U.S. importer by the time of shipment.

(H) I understand that failure to maintain the required certification and supporting documentation, failure to substantiate the claims made herein, and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD)/countervailing duty (CVD) orders on hardwood plywood from China. I understand that such a finding will result in:

○ suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates as determined by Commerce; and

○ the revocation of {NAME OF EXPORTING COMPANY}'s privilege to certify that future imports of hardwood plywood are not produced under any of the production scenarios subject to these certifications.

(J) This certification was completed at time of shipment;

(K) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE}
{DATE}

Appendix V

Companies That Failed To Cooperate

1. Arrow Forest International Co., Ltd
2. BAC Son Woods Processing Joint Stock Company
3. BHL Thai Nguyen Corp.
4. Cam Lam Joint Stock Company
5. Eagle Industries Company Limited
6. Golden Bridge Industries Pte. Ltd.
7. Govina Investment Joint Stock Company
8. Greatriver Wood Co. Ltd.
9. Groll Ply and Cabinetry
10. Hai Hien Bamboo Wood Joint Stock Company
11. Her Hui Wood (Vietnam) Co., Ltd.
12. Hoang LAM Plywood Joint Stock Co.
13. Huong Son Wood Group Co., Ltd.
14. Innovgreen Thanh Hoa Co. Ltd.
15. Lechenwood Viet Nam Company Limited
16. Long LUU Plywood Production Co., Ltd.
17. Long Phat Construction Investment and Trade Joint Stock Company
18. Plywood Sunshine Ltd. Co.
19. Quang Phat Woods JSC
20. TEKCOM Corporation
21. TL Trung Viet Company Limited
22. VVAT Company Limited
23. Win Faith Trading
24. Zhongjia Wood Company Limited

Companies That Failed To Respond

1. Bao Yen MDF Joint Stock Company
2. BHL Vietnam Investment and Development
3. Dong Tam Production Trading Company Limited
4. Linwood Vietnam Co. Ltd
5. Quoc Thai Forestry Import Export Limited Company
6. Rongjia Woods Vietnam Company Limited
7. Sumec Huongson Wood Group Co. Ltd.
8. Tan Tien Co. Ltd
9. Thang Long Wood Panel Company Ltd.

10. Thanh Hoa Stone Export Company
11. Truong Son North Construction JSC
12. Vietind Co. Ltd.
13. Vietnam Golden Timber Company Limited

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Matching Fund Opportunity for Ocean and Coastal Mapping and Request for Partnership Proposals

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of matching fund opportunity; request for proposals.

SUMMARY: This notice invites non-Federal entities to partner with the ocean and coastal mapping programs of NOAA's National Ocean Service on jointly-funded projects of mutual interest, and establishes selection criteria and submission requirements for such projects under the NOAA Rear Admiral Richard T. Brennan Ocean Mapping Fund program. With this funding opportunity, NOAA will match selected non-Federal partners at a 70:30 NOAA: partner ratio for projects totaling up to $1,000,000, and proposing to contract for ocean, coastal and/or Great Lakes mapping data. Selected non-Federal partners further benefit from this opportunity by leveraging NOAA's contracting (NOAA has a pool of pre-qualified technical experts in surveying and mapping) and data management expertise. This ocean and coastal mapping funding opportunity is subject to the availability of funds.

DATES: Project proposals, including any optional GIS files of the proposed project areas, must be received via email at the email address listed in the **ADDRESSES** section below by 5 p.m. Eastern Time (ET) on October 10, 2023. If an entity is unable to apply for this particular opportunity, but is interested in participating in similar, future opportunities, NOAA requests a one-page statement of interest, also by October 10, 2023. Please include all required components of the proposal in one email. Incomplete and late submissions will not be considered.

After reviewing the project proposals, NOAA will issue its decision on the proposals, which are subject to the availability of funding, on November 15, 2023. Between December 2023 and January 2024, NOAA will work with the project partners it selects to develop agreements to facilitate the transfer of funds for the projects. By March 2024, these agreements will be finalized. Between June and September 2024, non-Federal partners will transfer their matching funds to NOAA. Between January and September of 2025, NOAA will issue task orders to its survey contractors for the partner projects.

NOAA will host an informational webinar and office hours to provide more information about the matching fund opportunity and answer any questions:

- August 10, 2023: Informational Webinar at 1 p.m. ET. To participate, please register at *https://attendee.gotowebinar.com/register/1673584672481823584.*
- September 14, 2023: Virtual office hours between 8:00 a.m. and 5:00 p.m. ET. These office hours will present an opportunity for interested entities to validate their proposals with experts before submitting a project proposal. In advance of September 14, 2023, register for a 30-minute time slot by emailing *iwgocm.staff@noaa.gov.*

ADDRESSES: Project proposals must be submitted via email to *iwgocm.staff@noaa.gov.*

The following is a list of documents that applicants may find useful and the websites where they may be found:

- the *National Ocean Mapping, Exploration and Characterization Strategy* (NOMEC), the *Alaska Coastal Mapping Strategy* (ACMS), and the Coast Survey *Ocean Mapping Plan: https://iocm.noaa.gov/about/strategic-plans.html;*
- *the Ocean Climate Action Plan* (OCAP): *https://www.noaa.gov/sites/default/files/2023-03/Ocean-Climate-Action-Plan_Final.pdf;*
- *the U.S. Bathymetry Gap Analysis: https://iocm.noaa.gov/seabed-2030-bathymetry.html;*
- *the U.S. Interagency Elevation Inventory: https://catalog.data.gov/dataset/united-states-interagency-elevation-inventory-usiei;*
- *the U.S. Mapping Coordination site: fedmap.seasketch.org;*
- *NOAA's Hydrographic Surveys Specifications and Deliverables publication: https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/HSSD_2022.pdf;*
- *NOAA Shoreline Mapping Specifications and Deliverables: https://geodesy.noaa.gov/ContractingOpportunities/cmp-sow-v15.pdf;* and
- *the International Hydrographic Organization's Standards for Hydrographic Surveys, Special Publication 44: https://iho.int/uploads/user/pubs/standards/s-44/S-44_Edition_6.1.0.pdf.*

More information on NOAA's surveying and mapping contracting vehicles is available at *https://iocm.noaa.gov/planning/contracts-grants-agreements.html,* along with background information, questions and answers, and slides on this funding opportunity.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or to register for the September 14, 2023, office hours, contact Ashley Chappell, NOAA Integrated Ocean and Coastal Mapping, at *iwgocm.staff@noaa.gov,* or (240) 429–0293.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA's Office of Coast Survey (OCS) and National Geodetic Survey (NGS) are responsible for conducting hydrographic surveys and coastal mapping for safe navigation, the conservation and management of coastal and ocean resources, and emergency response. NOAA has considerable hydrographic and shoreline mapping contracting expertise, including a cutting-edge understanding of the science and related acoustic systems as well as data standards to ensure broad usability of that data.

NOAA is committed to meeting its mapping missions as collaboratively as possible, adhering to the Integrated Ocean and Coastal Mapping (IOCM) principle of ''Map Once, Use Many Times.'' However, the resources needed to fully achieve the goal of comprehensively mapping U.S. named oceans and coasts currently exceed NOAA's capacity. Mapping the full extent of waters subject to U.S. jurisdiction means relying on partners to contribute to the effort.

The establishment of the Rear Admiral Richard T. Brennan Ocean Mapping Fund program is one way that NOAA seeks to expand partnerships and acquisition of U.S. ocean, coastal, and Great Lakes mapping data. NOAA Rear Admiral Richard T. Brennan, one of IOCM's strongest advocates, developed the *Ocean Mapping Plan* for OCS in August 2020 in which IOCM plays a large role. The *Ocean Mapping Plan* responds to a number of national drivers to map the full extent of U.S. waters subject to U.S. jurisdiction to modern standards, including the June 2020 publications of the *National Strategy for Mapping, Exploring, and Characterizing the U.S. Exclusive Economic Zone* (NOMEC), the *Alaska Coastal Mapping Strategy* (ACMS), and

the 2023 *Ocean Climate Action Plan* (OCAP). The *Ocean Mapping Plan* also describes a number of reasons NOAA is committed to surveying and mapping waters subject to U.S. jurisdiction, including, but not limited to:

- Safe marine transportation;
- Coastal community resilience;
- A need to better understand the influence of the ocean's composition on related physical and ecosystem processes that affect climate, weather, and coastal and marine resources and infrastructure;
- Interest in capitalizing on the Blue Economy in growth areas like seafood production, tourism and recreation, marine transportation, and ocean exploration;
- The national prerogative to exercise U.S. sovereign rights to explore, manage, and conserve natural resources in waters subject to U.S. jurisdiction; and
- International interest in mapping the ocean by 2030.

Sadly, Rear Admiral Richard T. Brennan passed away in May 2021. Nevertheless, IOCM continues to implement Rear Admiral Richard T. Brennan's vision and passion for collaborative ocean mapping through this matching fund opportunity named in his honor.

II. Description

This notice invites non-Federal entities to partner with the ocean and coastal mapping programs of NOAA's National Ocean Service on jointly-funded projects of mutual interest that address the drivers noted in Section I above. These projects will establish ocean, coastal, and Great Lakes survey and mapping partnerships using NOAA's geospatial contracting vehicles. NOAA will use the selection criteria and submission requirements described in Sections V and VI, respectively, to review project proposals.

The goal of the Rear Admiral Richard T. Brennan Ocean Mapping Fund program is to leverage NOAA and non-Federal partner funds to acquire more ocean and coastal mapping data from qualified contract surveyors during Fiscal Year (FY) 2025. Subject to the availability of appropriations, NOAA will provide up to 70 percent of the total project cost, with the selected entity providing at least 30 percent of the total project cost. For example, for a $1 million project, the partner must provide at least $300,000, and NOAA would provide up to $700,000.

NOAA anticipates funding between two and five projects, with a total cost of up to $1 million per project. NOAA may consider providing additional funding for a project, thereby exceeding $1 million, subject to the availability of funds and NOAA's discretion. All projects are expected to have a FY 2025 project start date, and NOAA must receive all non-Federal partner matching funds before October 2024. NOAA reserves the right to increase or decrease its funding match based on the quality and feasibility of proposals received.

After NOAA selects a non-Federal entity as a partner, NOAA will enter into an agreement with the partner pursuant to the Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883e), which enables NOAA to receive funds for the mapping project.

In addition to providing matching funds, NOAA brings its expertise to manage survey planning, quality-assure all data and products, provide the data and products to the partners within an agreed-upon timeframe, and handle data submission to the National Centers for Environmental Information for archiving and public accessibility. All ocean and coastal data and related products from the Rear Admiral Richard T. Brennan Ocean Mapping Fund program will be available to the public to the greatest extent allowed by applicable laws.

The specific value-added services NOAA will provide include:

- Assurance that the data are collected by qualified survey contractors to ensure broadest use and accessibility of the data;
- Project management and GIS-based task order planning, negotiation, and award of necessary procurement contracts that are tailored to meet the interests of matching fund partners and managed on aerial, shipboard, and uncrewed vehicles;
- Managing survey compliance with applicable laws, such as the National Environmental Policy Act and National Historic Preservation Act;
- Data processing, quality assessment, and review of all acquired hydrographic data; and
- Data management and stewardship through data archive at the National Centers for Environmental Information.

Data acquisition collection methods include, but are not limited to multibeam echosounder, side scan sonar, lidar (topographic, bathymetric, mobile), subsurface and airborne feature investigations, and sediment sampling. Products acquired may include, but are not limited to:

- Bathymetric data (multibeam, single beam, lidar),
- Backscatter,
- Water column (depth dependent),
- Side scan sonar imagery,
- Feature detection reports,
- Sensor/data corrections and calibrations (*e.g.,* conductivity, temperature and depth casts, horizontal/vertical position uncertainty),
- Survey and control services, including the installation, operation, and removal of water level and Global Positioning System stations,
- High-resolution topographic/bathymetric product generation, and
- A final project report.

More information on NOAA's surveying and mapping processes and products can be found in the OCS Hydrographic Surveys Specifications and Deliverables and the NGS Shoreline Mapping Specifications and Deliverables publications.

III. Strategic Areas of Focus

For this opportunity, proposals will be considered that align with national priorities for climate and infrastructure and the goals of the NOMEC, ACMS, the OCS *Ocean Mapping Plan,* and OCAP. Those goals include:

1. *Map U.S. Waters:* Mapping U.S. deep waters (>40m) by 2030 and shallower waters by 2040 would give the United States unprecedented and detailed information about the depth, shape, and composition of its seafloor and Great Lakes (NOMEC Goal 2). Based on the January 2023 analysis of data holdings at NOAA's National Centers for Environmental Information, 50 percent of waters subject to U.S. jurisdiction are unmapped (*https://iocm.noaa.gov/seabed-2030-status.html*). Acquiring the best available data in poorly surveyed and gap areas means working with partners to contribute to the effort. By sharing its mapping expertise with others, NOAA can build depth in the ocean and coastal mapping community to increase the quantity and quality of seafloor data acquired overall (*Ocean Mapping Plan* Goal 2).

2. *Expand Alaska Coastal Data Collection to Deliver the Priority Geospatial Products Stakeholders Require:* Mapping the Alaska coast is challenging. However, using targeted and coordinated data collections will potentially reduce overall costs and improve the cost-to-benefit ratio of expanded mapping activities (ACMS Goal 2).

3. *Expand Coastal Mapping to Inform Science-based Decision-making Capabilities:* This priority stems from a broader OCAP action for coastal climate resilience to "expand coastal mapping, monitoring, observational systems, research, and modeling to inform science-based decision-making capabilities and advance use of nature-

based solutions.'' Climate change is greatly influencing the need to map all of our named oceans and coasts in detail. The data is integral to decision-making on coastal resilience efforts to save lives, implement proper infrastructure planning, and protect sensitive coastal ecosystems in light of ocean-born natural disasters.

IV. Proposal Eligibility

This matching fund opportunity is available to non-Federal entities. Examples of non-Federal entities include state and local governments, tribal entities, universities, researchers and academia, the private sector, non-governmental organizations (NGOs), and philanthropic partners. Qualifying proposals must demonstrate the ability to provide at least 30 percent of the funds needed for the proposed project. A coalition of non-Federal entities may assemble funds for the match and submit a proposal jointly. Use of other Federal agency funds as part of the non-Federal entities' match funds will be considered on a case-by-case basis and only as authorized by applicable laws. In-kind contributions are welcome to strengthen the project proposal but do not count toward the match and are not required.

V. Selection Criteria

Proposals will be evaluated by the Rear Admiral Richard T. Brennan Ocean Mapping Fund Program Management Team. Submissions will be ranked based on the following selection criteria:

1. Project justification (30 points)—This criterion ascertains whether there is intrinsic IOCM value in the proposed work and/or relevance to NOAA's missions and priorities (several noted in Section III), including downstream partner proposals and uses. Use of, and reference to, national priorities on coastal climate resilience and infrastructure, NOMEC, ACMS, the Coast Survey *Ocean Mapping Plan,* and OCAP; gap assessment tools such as the U.S. Bathymetry Gap Analysis; and the U.S. Interagency Elevation Inventory, among others, are recommended. The U.S. Mapping Coordination site shows current NOAA mapping plans as well as the latest in Federal mapping priorities and select regional mapping priorities.

2. Statement of need (10 points)—This criterion assesses clarity of project need, partner project funding alternatives if not selected, anticipated outcomes, and public benefit.

3. Specified partner match (20 points)—The proposal identifies a point of contact for the entity submitting the proposal, as well as any partnering entities, a clear statement on partner matching funds provenance (*e.g.,* state appropriations, NGO funds, or other sources) and timing of funds availability. In-kind contributions are welcome to strengthen the proposal but do not count toward the funding match and are not required.

4. Project costs (15 points)—This criterion evaluates whether the proposed budget is realistic and commensurate with the proposed project needs and timeframe.

5. Project feasibility and flexibility (25 points)—This criterion assesses the likelihood that the proposal would succeed, using evaluations of survey conditions, project size, location, weather, NOAA analysis of environmental compliance implications, project flexibility and adaptability to existing NOAA plans and schedules, and other factors.

During the proposal review period, the Rear Admiral Richard T. Brennan Ocean Mapping Fund Program Management Team reserves the right to engage with proposal points of contact to ask questions and provide feedback on project costs and feasibility.

VI. Submission Requirements

Project Proposal—To qualify, a proposal shall not exceed six (6) total pages and must include the following three components:

1. A project title; executive summary (3–5 sentences); and the names, affiliations, and roles of the project partners and any co-investigators, as well as the project lead that will serve as primary contact (1 page maximum).

2. A justification and statement of need; description and graphics of the proposed survey area, including relevance to the strategic areas of focus noted in Section III and degree of flexibility on timing of survey effort (4 pages maximum).

3. A project budget that lists the source(s) and amount(s) of funding that the partner would provide as its match to NOAA. Budget must confirm that partner funds can be transferred to NOAA before October 2024 (1 page maximum).

Proposals must be sent in a PDF format, and use 12-point, Times New Roman font, single spacing, and 1-inch margins. Failure to adhere to these submission requirements will result in the proposal being returned without review and eliminated from further consideration.

To facilitate review, NOAA welcomes the submission of GIS files of project areas. These ancillary GIS files must be in SHP format.

VII. Management and Oversight

Once the Rear Admiral Richard T. Brennan Ocean Mapping Fund Program Management Team selects project proposals, NOAA will coordinate the development of agreements, funding transfers, project planning, environmental compliance, acquisition awards, and quality assurance process with the project partners. NOAA may bring in additional partners and/or funding (Federal and/or non-Federal) to expand a project further, if feasible. Projects will be reviewed by NOAA annually to ensure they are responsive to partner interests and NOAA mission requirements, and to identify opportunities for outreach and education on the societal benefits of the work.

Authority: 33 U.S.C. 883e.

RDML Benjamin K. Evans,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–15419 Filed 7–19–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC919]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Construction in Tongass Narrows in Ketchikan, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to ferry berth construction in Tongass Narrows in Ketchikan, 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 August 21, 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.Fleming@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.

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: *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 below.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401.

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 January 24, 2023, NMFS received a request from ADOT&PF for an IHA to take marine mammals incidental to the construction and improvements to four (initially five—see explanation below) ferry berths in Tongass Narrows in Ketchikan, Alaska. On February 23, 2023, ADOT&PF submitted a memo proposing additional construction activities at this project site, which was later retracted on March 21, 2023. Following NMFS' review of the application and discussions between NMFS and ADOT&PF, on May 2, 2023, ADOT&PF asked NMFS to halt processing of the IHA until it submitted an acoustic monitoring report associated with previous work at the project site. ADOT&PF submitted the report on May 24, 2023. NMFS reviewed and accepted the results in the report, and the application was deemed adequate and complete on June 27, 2023. ADOT&PF's request is for take of eleven species of marine mammals, by Level B harassment and, for Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoenoides dalli*), Level A harassment. Neither ADOT&PF nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued two consecutive IHAs to ADOT&PF for this work (85 FR 673, January 7, 2020), which covered construction at the following six sites: Revilla New Ferry Berth and Upland Improvements (Revilla New Berth), New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements (Gravina New Berth), Gravina Airport Ferry Layup Facility, Gravina Freight Facility, Revilla Refurbish Existing Ferry Berth Facility, and Gravina Refurbish Existing Ferry Berth Facility (Figure 1). Due to various project delays (and two minor changes to the phase 1 IHA activities), the phase 1 IHA was renewed (86 FR 23938, May 05, 2021) and the phase 2 IHA was reissued (87 FR 12117, March 3, 2022). Upon the expiration of the phase 1 renewal, because a subset of work had still not been completed, ADOT&PF requested, and NMFS issued, a new IHA (87 FR 15387, March 18, 2022) which was renewed upon its expiration (88 FR 13802, March 6, 2023). The reissued phase 2 IHA expired on February 28, 2023. While the current renewal IHA (88 FR 13802, March 6, 2023) does not expire until March 5, 2024, ADOT&PF proposed new project components that would warrant a new IHA, and a subset of activities covered under the reissued phase 2 IHA remain incomplete. As such, ADOT&PF has requested a new IHA to authorize take of marine mammals associated with all remaining work at the Tongass Narrows sites. Work at the Gravina Airport Ferry Layup Facility was completed prior to the application of this new IHA. Since the submission of ADOT&PF's 2023 IHA application, work has also been completed at the Gravina Freight

Facility. As such, remaining work proposed is limited to four project sites: Revilla New Berth, Gravina New Berth, Revilla Refurbish Existing Ferry Berth Facility, and Gravina Refurbish Existing Ferry Berth Facility. ADOT&PF has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs with the exception of one incident in which ADOT&PF reported that a pile had been removed without the presence of a Protected Species Observer (PSO) on site. ADOT&PF reported the incident immediately and retrained the Construction Contractor's Foreman and ADOT&PF's on-site representative. ADOT&PF also notified NMFS on May 18, 2023 that 12 20'' piles that were not included in the renewal, but were included in the initial IHA on which the renewal was based, were driven after expiration of the initial IHA (while the renewal was effective). Monitoring results from the previous IHAs are discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat and the Estimated Take of Marine Mammals section.

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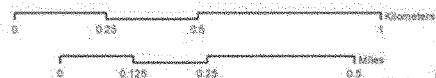
Project Components

Complete

Incomplete

Alaska Department of Transportation
& Public Facilities

Tongass Narrows Project



Map information was compiled from the best available sources. No warranty is made for its accuracy or completeness. Projection is NAD 83 State Plane Zone 1. Date: 1/18/2023

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Figure 1—Tongass Narrows Project Area

Description of Proposed Activity

Overview

ADOT&PF is making improvements to two existing ferry berths and constructing two new ferry berths on Gravina Island and Revillagigedo (Revilla) Island in Tongass Narrows, near Ketchikan, in southeast Alaska (Figure 1). The existing ferry facilities improve access to developable land on Gravina Island, improve access to the Ketchikan International Airport, and facilitate economic development in the Ketchikan Gateway Borough. The new ferry berths provide redundancy to the existing ferry berths. The project's proposed activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include down-the-hole (DTH) drilling of rock sockets and tension anchors, vibratory installation and removal of temporary steel pipe piles and/or H-piles, vibratory and impact installation of permanent steel pipe piles, and vibratory removal of permanent piles (in cases where work is being redone). The marine construction associated with the proposed activities is planned to occur over 131 non-consecutive days over 1 year.

Dates and Duration

ADOT&PF anticipates the project would require approximately 131 days of pile installation and removal over the course of 1 year. Construction is planned to occur during daylight hours only with in-water construction occurring 7 days per week. This IHA would be effective for 1 year from the date of issuance.

Specific Geographic Region

The proposed construction project is in Tongass Narrows in Ketchikan, Alaska, on Revilla Island, 2.6 miles (4.2 kilometers) north of downtown Ketchikan, and Gravina Island, adjacent to the Ketchikan International Airport. All project components are located within approximately 0.5 miles (0.8 kilometers) of one another within the City of Ketchikan (Figure 1). The Revilla New Berth and Gravina New Berth are being constructed immediately adjacent to the existing ferry berths on Revilla and Gravina Islands, respectively.

A description of Tongass Narrows was provided in the proposed **Federal Register** notice for an IHA associated with previous work completed at these project sites (87 FR 5980, February 2, 2022). Please refer to that notice for additional information.

Detailed Description of the Specified Activity

Planned construction includes the installation and continued construction of new ferry facilities and the renovation of existing structures. As stated above, the four proposed construction components include: Revilla New Berth, Gravina New Berth, Revilla Refurbish Existing Ferry Berth Facility, and Gravina Refurbish Existing Ferry Berth Facility. Each of the project components would include installation and/or removal of steel pipe piles that are 24 or 30-inches diameter, or steel 14-inch H-piles using vibratory, impact, and/or DTH methods (Table 1). ADOT&PF does not plan to operate multiple hammers concurrently.

Revilla New Berth

The Revilla New Berth facility will consist of a 7,400-square-foot (687.5 square meter) pile-supported approach trestle at the shore side of the ferry terminal and a 1,500-square-foot (139.4 square meter) pile-supported approach trestle extension located landside and north of the new approach trestle. A 25-foot (17.6 meters) by 142-foot (43.3 meters) steel transfer bridge with vehicle traffic lane and separated pedestrian walkway will extend from the trestle to a new 2,200- square-foot (204.4 square meter) steel float and apron. The steel float will be supported by three guide pile dolphins. Two new stern berth dolphins with fixed hanging fenders and three new floating fender dolphins will be constructed to moor vessels. The new apron will be supported by three new guide pile dolphins. Water depths at the dolphins will reach approximately 60 feet (18.3 meters). Some permanent piles originally installed in previous years may need to be removed and reinstalled in the correct locations (Table 1).

Gravina New Berth

The Gravina New Berth facility will consist of an approximately 7,000-square-foot (650.3 square meter) pile-supported approach trestle at the shore side of the ferry terminal. A 25-foot (17.6 meters) by 142-foot (43.3 meters) steel transfer bridge with a vehicle traffic lane and separated pedestrian walkway will lead to a new 2,200-square-foot 204.4 square meter steel float and apron. The steel float will be supported by three new guide pile dolphins. Ferry berthing will be supported by two new stern berth dolphins and three new floating fender dolphins. To support the new facility, a new bulkhead retaining wall will be constructed between the existing ferry berth and the new approach trestle. A new fill slope measuring approximately 21,200 square feet (1,969.5 square meter) will be constructed west of the approach trestle. Upland improvements include widening of the ferry approach road, retrofits to the existing pedestrian walkway, installation of utilities, and construction of a new employee access walkway.

Revilla Refurbish Existing Ferry Berth

Improvements to the existing Revilla Island Ferry Berth will include the following: (1) replace the transfer bridge, (2) replace rubber fender elements and fender panels, (3) replace one 24-inch pile on the floating fender dolphin, and (4) replace the bridge float with a concrete or steel float of the same dimensions. Construction of the transfer bridge, bridge float, and fender elements will occur above water. The only in-water work will be pile installation and removal associated with construction of the one remaining dolphin.

Gravina Refurbish Existing Ferry Berth

Improvements to the existing Gravina Island Ferry Berth will include the following: (1) replace the transfer bridge, (2) remove the catwalk and dolphins, (3) replace the bridge float with a concrete or steel float of the same dimensions, (4) construct a floating fender dolphin, and (5) construct four new breasting dolphins. Construction of the transfer bridge, catwalk, and bridge float will occur above water. The only in-water work will be pile installation and removal associated with construction of the dolphins. Some piles installed in previous years may need to be removed and reinstalled (Table 1).

Across the four project sites, three methods of pile installation are anticipated. These include use of vibratory and impact hammers and use of DTH systems to make holes for rock sockets and tension anchors at some locations. Installation of steel piles through the overburden layer would be accomplished using vibratory or impact methods. Where the overburden is deep, rock socketing or anchoring (described below) is not required, and the final approximately 10 ft (3 m) of driving would be conducted using an impact hammer. Some permanent piles would be battered (*i.e.,* installed at an angle). In shallow overburden, an impact hammer would be used to seat the piles into competent bedrock before a DTH system would be used to create holes for the rock sockets and/or tension anchors. The pile installation methods used would depend on overburden depth and conditions at each pile location. A description of DTH methods for rock

socketing and tension anchor installation was provided in the notice of proposed IHA associated with previous work completed at these project sites (87 FR 5980, February 2, 2022). Vibratory methods would also be used to remove temporary steel pipe piles. These proposed activities and the noise they produce have the potential to take marine mammals, by Level A harassment and Level B harassment of marine mammals.

The estimated installation rate of piles vary depending on pile type and location (Table 1). On some days, more or fewer piles or partial piles may be installed. It would likely not be possible to install an individual permanent pile to refusal with a vibratory hammer, use DTH methods for the rock socket, impact proof, and install the tension anchor on the same day. The construction crew may use a single installation method for multiple piles on a single day or find other efficiencies to increase production; the anticipated ranges of possible values are provided in Table 1.

Approximately 131 days of pile installation and removal are anticipated (Table 1). Note that ADOT&PF's application reflects 152 construction days rather than 131, but this number has been adjusted to account for one of five sites that has been completed. Up to 26 permanent piles previously installed will be removed and reinstalled. An additional 51 permanent piles will be installed. An additional 84 template piles will be installed and removed.

Above-water work would consist of the installation of concrete or steel platform decking panels, transfer bridges, dock-mounted fenders, pedestrian walkways, gangways, and utility lines. Upland construction activities will consist of new terminal facilities, staging areas, parking lot expansions, new roadways, retaining walls, stairways, and pedestrian walkways. No in-water noise is anticipated in association with above-water and upland construction activities, and no associated take of marine mammals is anticipated from the noise or visual disturbance. Therefore, above-water and upland construction activities are not discussed further in this document.

TABLE 1—PILE DETAILS FOR EACH PROJECT COMPONENT

Project component / Pile type	Number of piles	Number of rock sockets	Number of tension anchors	Average vibratory duration per pile (minutes)	Average DTH duration for rock sockets per pile (minutes)	Average DTH duration for tension anchors per pile (minutes)	Impact strikes per pile (duration in minutes)	Estimated total number of hours per pile (range)	Average piles per day (range)	Days of installation and removal
Revilla New Berth (Installation):										
30″ Permanent	13		3	30		120–240	200 (15)	2 (0.75–4.75)	1 (1–3)	13
24″ or 14″ H Template	28			120			50 (15)	2.25	2 (1–4)	14
Revilla New Berth (Removal):										
30″ Permanent	13			60				1	3 (1–6)	5
24″ or 14″ H Template	28			60				1	6 (1–8)	5
Gravina New Berth (Installation):										
24″ Permanent	27	11	28	30	180–360	120–240	200 (15)	6 (2.75–10.75)	1 (1–3)	27
24″ or 14″ H Template	24			120			50 (15)	2.25	2 (1–4)	12
Gravina New Berth (Removal):										
24″ or 14″ H Template	24			60				1	6 (1–8)	4
Revilla Refurbish Existing Ferry Berth Facility (Installation):										
24″ Permanent	1			120			200 (15)	2.25	1	1
Revilla Refurbish Existing Ferry Berth Facility (Removal):										
24″ Permanent	1			60				1	1	1
Gravina Refurbish Existing Ferry Berth Facility (Installation):										
24″ Permanent	23	13	16	30	180–360	120 (120–240)	200 (15)	6 (2.75–10.75)	1 (1–3)	23
24″ or 14″ H Template	32			120			50 (15)	2.25	2 (1–4)	16
Gravina Refurbish Existing Ferry Berth Facility (Removal):										
24″ Permanent	12			60				1	3 (1–6)	4
24″ or 14″ H Template	32			60				1	6 (1–8)	6

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a

marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska and Pacific Ocean 2021 SARs (*e.g.,* Muto *et al.,* 2022, Caretta *et al.* 2022) and the draft 2022 SARs (*e.g.,* Young *et. al.,* 2022). All values presented in Table 2 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.*

TABLE 2—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Minke Whale [4]	*Balaenoptera acutorostrata*	AK	-,-,N	N/A (N/A, N/A, N/A)	UND	0
Fin Whale [5]	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	3,168 (0.26, 2,554, 2013)	UND	0.6
Humpback Whale	*Megaptera novaeangliae*	Central North Pacific	-,-,Y	10,103 (0.3, 7,891, 2006)	3.4	4.46
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-,-,N	26,960 (0.05, 25,849, 2016).	801	131
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Pacific White-sided Dolphin	*Lagenorhynchus obliquidens*	N Pacific	-,-,N	26,880 (N/A, N/A, 1990)	UND	0
Killer Whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-,-,N	1,920, (N/A, 1,920, 2019)	19	1.3
		Eastern North Pacific Northern Resident.	-,-,N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-,-,N	349 (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor Porpoise [6]	*Phocoena phocoena*	Southeast Alaska	-,-,Y	1302 (0.21, 1057, 2019)	UND	34
Dall's Porpoise [7]	*Phocoenoides dalli*	Alaska	-,-,N	15,432 (0.097, 13,110, 2021).	131	37
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-,N	43,201 (N/A, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Northern Elephant Seal	*Mirounga angustirostris*	CA Breeding	-,-,N	187,386 (N/A, 85,369, 2013).	5,122	13.7
Harbor Seal	*Phoca vitulina*	Clarence Strait	-,-,N	27,659 (N/A, 24,854, 2015).	746	40

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] No population estimates have been made for the number of minke whales in the entire North Pacific. Some information is available on the numbers of minke whales on some areas of Alaska, but in the 2009, 2013 and 2015 offshore surveys, so few minke whales were seen during the surveys that a population estimate for the species in this area could not be determined (Rone *et al.,* 2017). Therefore, this information is N/A (not available).

[5] The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range. Based upon this estimate and the Nmin, the PBR value is likely negatively biased for the entire stock.

[6] Abundance estimates assumed that detection probability on the trackline was perfect; work is underway on a corrected estimate. Additionally, preliminary data results based on eDNA analysis show genetic differentiation between harbor porpoise in the northern and southern regions on the inland waters of southeast Alaska. Geographic delineation is not yet known. Data to evaluate population structure for harbor porpoise in Southeast Alaska have been collected and are currently being analyzed. Should the analysis identify different population structure than is currently reflected in the Alaska SARs, NMFS will consider how to best revise stock designations in the future.

[7] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

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 and harbor porpoise stock structures. The new humpback whale structure, if finalized, would modify the MMPA-designated stocks to align more closely with the ESA-designated Distinct Population Segments (DPS). The new harbor porpoise structure, if finalized, would modify the Southeast Alaska stock into three stocks: the Northern Southeast Alaska Inland Waters, Southern Southeast Alaska Inland Waters, and Yakutat/Southeast Alaska Offshore Waters. 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 here for all species and stocks, with the exception of the new proposals to revise harbor porpoise and humpback whale stock structure. Given that the proposed changes to these stock structures involve application of NMFS's Guidance for Assessing Marine Mammals Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis in this proposed authorization based on the status quo stock structures identified in the most recent final SARs for these species (2021; Muto *et al.,* 2022).

As indicated above, all 11 species (with 13 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

In addition, the northern sea otter may be found in Tongass Narrows. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Minke Whale

Minke whale surveys in Southeast Alaska have consistently identified individuals throughout inland waters in low numbers (Dahlheim *et al.* 2009). All sightings were of single minke whales, except for a single sighting of multiple minke whales. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years. No information appears to be available on the winter occurrence of minke whales in Southeast Alaska.

There are no known occurrences of minke whales within the project area. No minke whales were reported during the nearby City of Ketchikan (COK) Rock Pinnacle Blasting Project (Sitkiewicz 2020) located approximately 2.5 miles (4 kilometers) southeast of the proposed project site, or across 8 months of monitoring at Ward Cove Cruise Ship Dock in 2020, located approximately 3.7 miles (6 kilometers) northwest of the Project site (Power Systems and Supplies of Alaska, 2020). Additionally, no minke whales were observed during the marine mammal monitoring that took place during construction of previous components of the Tongass Narrows Project (ADOT&PF 2021, 2022, 2023). However, since minke whale have been observed in southeast Alaska, including in Clarence Strait (Dahlheim *et al.,* 2009), it is possible the species could occur near the project area. Future observations of minke whale in the project area are expected to be rare.

Fin Whale

Fin whales in the Northeast Pacific are typically distributed off the coast of the Gulf of Alaska and the Bering and Chukchi Seas. They are seldom detected outside the Gulf of Alaska in summer months, suggesting that the northern populations are migratory (Muto *et al.* 2021). They typically inhabit deep, offshore waters and often travel in open seas away from coasts. They often occur in social groups of two to seven individuals. Fin whales are not expected to occur in Tongass Narrows, but a single fin whale was recently observed in Clarence Strait (Scheurer, personal communication).

Humpback Whale

Humpback whales in the project area are predominantly of the Hawaii DPS, which is not ESA-listed. However, based on a comprehensive photo-identification study, individuals of the Mexico DPS, which is listed as threatened, are known to occur in Southeast Alaska. Individuals 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. Approximately 2 percent of all humpback whales in Southeast Alaska and northern British Columbia are of the Mexico DPS, while all others are of the Hawaii DPS (NMFS 2021).

The stock delineations of humpback whales under the MMPA are currently under review. Until this review is complete, NMFS considers humpback whales in Southeast Alaska to be part of the Central North Pacific stock, with a status of endangered under the ESA and designations of strategic and depleted under the MMPA (Muto *et al.* 2021).

The project area overlaps a Biologically Important Area (BIA) identified as important for humpback whale feeding (Wild *et al.,* 2023). The BIA that overlaps the project area is active May through September, which overlaps with ADOT&PF's planned work period (any time of year). According to the criteria outlined in Harrison *et al.* (2023), the BIA is considered to be of lower importance, has low boundary certainty, and limited data to support the identification of the BIA. The BIA was identified as having ephemeral spatiotemporal variability.

Most humpback whales migrate to other regions during the winter to breed, but rare events of over-wintering humpbacks have been noted, and may be attributable to staggered migration (Straley, 1990; Straley *et al.* 2018). Group sizes in Southeast Alaska generally range from one to four individuals (Dahlheim *et al.* 2009). No systematic studies have documented humpback whale abundance near Ketchikan. Anecdotal information suggests that this species is present in low numbers year-round in Tongass Narrows, with the highest abundance during summer and fall. PSOs associated with previous construction activities at this site have monitored the project site across 215 days between October 2020—February 2021, May 2021—February 2022, and March 2022—December 2022 (ADOT&PF 2021, 2022, 2023). During this time, 80 humpback whales were observed, or an average of 0.37 humpback whales per day. According to ADOT&PF, the average group size was 1.25 humpback whales and the maximum group size was 4 humpback whales. Humpbacks were also detected during marine mammal monitoring associated with other projects in Tongass Narrows. The COK Rock Pinnacle project reported one humpback whale sighting of one individual during the project (December 2019—January 2020) (Sitkiewicz 2020). During the Ward Cove Cruise Ship Dock Construction, PSOs observed 28 sightings of humpbacks on 18 days of in water work that occurred between February and September 2020, with at least one humpback being recorded every month. A total of 42 individuals were recorded and group sizes ranged from solo whales to pods of up to 6 (Power Systems & Supplies of Alaska 2020). Humpbacks were recorded in each month of construction, with the most individuals (10) being recorded in May, 2020.

Gray Whale

Gray whales are distributed throughout the North Pacific Ocean and

are found primarily in shallow coastal waters (Muto *et al.,* 2021). Gray whales in the Eastern North Pacific stock range from the southern Gulf of California, Mexico to the arctic waters of the Bering and Chukchi Seas. Gray whales are generally solitary and travel together alone or in small groups.

Gray whales are rare in the action area and unlikely to occur in Tongass Narrows. They were not observed during the Dahlheim *et al.* (2009) surveys of Alaska's inland waters with surveys conducted in the spring, summer and fall months. No gray whales were reported during the COK Rock Pinnacle Blasting Project (Sitkiewicz, 2020) or during monitoring surveys conducted between February and September 2020 as part of the Ward Cove Cruise Ship Dock (Power Systems & Supplies of Alaska, 2020), nor were they observed during 215 days of monitoring associated with the previous ADOT&PF Tongass Narrows construction activities (ADOT&PF 2021, 2023). However a gray whale could migrate through or near the project during November especially.

There is an ongoing Unusual Mortality Event (UME) involving gray whales on the Pacific Coast (*https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2023-gray-whale-unusual-mortality-event-along-west-coast-and*). A definitive cause has not been found for the UME but many of the animals show signs of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. As part of the UME investigation process, NOAA has assembled an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, consider possible causal-linkages between the mortality event and recent ocean and ecosystem perturbations, and determine the next steps for the investigation.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species inhabiting temperate waters of the North Pacific Ocean and along the coasts of California, Oregon, Washington, and Alaska (Muto *et al.,* 2021). Despite their distribution mostly in deep, offshore waters, they also occur over the continental shelf and near shore waters, including inland waters of Southeast Alaska (Ferrero and Walker 1996). The North Pacific stock occurs within the project area. Group sizes have been reported to range from 40 to over 1,000 animals, but groups of between 10 and 100 individuals (Stacey and Baird 1991) occur most commonly. Seasonal movements of Pacific white-sided dolphins are not well understood, but there is evidence of both north-south seasonal movement (Leatherwood *et al.* 1984) and inshore-offshore seasonal movement (Stacey and Baird 1991).

Pacific white-sided dolphins are rare in the inside passageways of Southeast Alaska. Most observations occur off the outer coast or in inland waterways near entrances to the open ocean. According to Muto *et al.* (2018), aerial surveys in 1997 sighted one group of 164 Pacific white-sided dolphins in Dixon entrance to the south of Tongass Narrows. Surveys in April and May from 1991 to 1993 identified Pacific white-sided dolphins in Revillagigedo Channel, Behm Canal, and Clarence Strait (Dahlheim and Towell 1994). These areas are contiguous with the open ocean waters of Dixon Entrance. Dalheim *et al.* (2009) frequently encountered Pacific white-sided dolphin in Clarence Strait with significant differences in mean group size and rare enough encounters to limit the seasonality investigation to a qualitative note that spring featured the highest number of animals observed. These observations were noted most typically in open strait environments, near the open ocean. Mean group size was over 20, with no recorded winter observations nor observations made in the Nichols Passage or Behm Canal, located on either side of the Tongass Narrows.

Pacific white-sided dolphins were not observed during the 215 days of marine mammal monitoring associated with ADOT&PF's previous construction activities at this site (ADOT&PF 2021, 2023). There were also no sightings of Pacific white-sided dolphins during the COK Rock Pinnacle Blasting Project during monitoring surveys conducted in December 2019 and January 2020 (Sitkiewicz 2020) nor during monitoring surveys for the Ward Cove Cruise Ship Dock Project (Power Systems and Supplies of Alaska, 2020).

Observational data and anecdotal information discussed above, indicates there is a rare, however, slight potential for Pacific white-sided dolphins to occur in the project area.

Killer Whale

Of the eight killer whale stocks that are recognized within the Pacific U.S. Exclusive Economic Zone, this proposed IHA considers only the Eastern North Pacific Alaska Resident stock (Alaska Resident stock), Eastern North Pacific Northern Resident stock (Northern Resident stock), and West Coast Transient stock, because all other stocks occur outside the geographic area under consideration (Muto *et al.,* 2021).

There are three distinct ecotypes, or forms, of killer whales recognized: Resident, Transient, and Offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Surveys between 1991 and 2007 encountered resident killer whales during all seasons throughout Southeast Alaska. Both residents and transients were common in a variety of habitats and all major waterways, including protected bays and inlets. There does not appear to be strong seasonal variation in abundance or distribution of killer whales, but there was substantial variability between years during this study (Dahlheim *et al.,* 2009). Spatial distribution has been shown to vary among the different ecotypes, with resident and, to a lesser extent, transient killer whales more commonly observed along the continental shelf, and offshore killer whales more commonly observed in pelagic waters (Rice *et al.,* 2021).

Transient killer whales are often found in long-term stable social units (pods) of 1 to 16 whales. Average pod sizes in Southeast Alaska were 6.0 in spring, 5.0 in summer, and 3.9 in fall. Pod sizes of transient whales are generally smaller than those of resident social groups. Resident killer whales occur in larger pods, ranging from 7 to 70 whales that are seen in association with one another more than 50 percent of the time (Dahlheim *et al.,* 2009; NMFS 2016b). In Southeast Alaska, resident killer whale mean pod size was approximately 21.5 in spring, 32.3 in summer, and 19.3 in fall (Dahlheim *et al.,* 2009).

While no systematic studies of killer whales have been conducted in or around Tongass Narrows, killer whales have been observed in Tongass Narrows year-round and are most common during the summer Chinook salmon run (May-July). During this time, Ketchikan residents have reported pods of 20–30 whales and during the 2016/2017 winter a pod of 5 whales was observed in Tongass Narrows (84 FR 36891, July 30, 2019).

Across the 215 days of monitoring during ADOT&PF's previous Tongass Narrows construct activities, a total of 78 killer whales were observed, for an average observation rate of 0.36 per day (ADOT&PF 2021, 2023). According to ADOT&PF, the average group size observed was 4.6 individuals while the maximum group size was eight. Killer whales have been observed occasionally during other projects completed in the Tongass Narrows. During the COK's

monitoring for the Rock Pinnacle Removal project in December 2019 and January 2020, no killer whales were observed (Sitkiewicz 2020). Over 8 months of monitoring at the Ward Cove Cruise Ship Dock in 2020, killer whales were only observed on 2 days in March (Power Systems and Supplies of Alaska, 2020). These observations included a sighting of one pod of two killer whales and a second pod of five individuals travelling through the project area. Killer whales tend to transit through Tongass Narrows and do not linger in the project area.

Harbor Porpoise

In the eastern North Pacific Ocean, the harbor porpoise ranges from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. The stock delineations of harbor porpoise under the MMPA are currently under review. Until this review is complete, NMFS considers harbor porpoise in Southeast Alaska to be divided into three stocks, based primarily on geography: The Bering Sea stock, the Southeast Alaska stock, and the Gulf of Alaska stock. The Southeast Alaska stock ranges from Cape Suckling to the Canadian border (Muto *et al.* 2021). Only the Southeast Alaska stock is considered herein because the other stocks occur outside the geographic area under consideration. Harbor porpoises frequent primarily coastal waters in Southeast Alaska (Dahlheim *et al.* 2009) and occur most frequently in waters less than 100 meters (328 feet) deep (Hobbs and Waite 2010; Dahlheim *et al.* 2015).

Studies of harbor porpoises reported no evidence of seasonal changes in distribution for the inland waters of Southeast Alaska (Dahlheim *et al.* 2009).

Harbor porpoises often travel alone or in small groups less than 10 individuals (Schmale 2008). According to aerial surveys of harbor porpoise abundance in Alaska conducted in 1991–1993, mean group size in Southeast Alaska was calculated to be 1.2 animals (Dahlheim *et al.* 2000).

Harbor porpoises prefer shallower waters (Dahlheim *et al.* 2015) and generally avoid areas with elevated levels of vessel activity and noise such as Tongass Narrows. However, harbor porpoises were sighted on 3 days of in-water work during monitoring associated with the Ward Cove Cruise Ship Dock, with three sightings of 15 individuals sighted in March and April, 2020 (Power Systems and Supplies of Alaska, 2020). Solo individuals and pods of up to 10 were identified as swimming and travelling 2,500 m to 2,800 m from in-water work. During ADOT&PF's marine mammal monitoring of Tongass Narrows, 21 harbor porpoises were observed during the March–December 2022 season, and ADOT&PF recently reported that 4 harbor porpoise were observed in the project area. Across all years, ADOT&PF reported an average group size of 3.5 and maximum group size was 5. Marine mammal monitoring associated with the COK Rock Pinnacle Removal project did not observe any harbor porpoise during surveys conducted in December 2019 and January 2020 (Sitkiewicz 2020). As such, Harbor porpoises are expected to be present in the project area only a few times per year.

Dall's Porpoise

Dall's porpoises are found throughout the North Pacific, from southern Japan to southern California north to the Bering Sea. All Dall's porpoises in Alaska are of the Alaska stock. This species can be found in offshore, inshore, and nearshore habitat.

Jefferson *et al.* (2019) presents historical survey data showing few sightings in the Ketchikan area, and based on these occurrence patterns, concludes that Dall's porpoise rarely come into narrow waterways, like Tongass Narrows. The mean group size in Southeast Alaska is estimated at approximately three individuals (Dahlheim *et al.* 2009; Jefferson 2019). Anecdotal reports suggest that Dall's porpoises are found northwest of Ketchikan near the Guard Islands, where waters are deeper, as well as in deeper waters to the southeast of Tongass Narrows. This species may occur in the project area a few times per year.

Marine mammal monitoring associated with the COK Rock Pinnacle Removal project did not observe any Dall's porpoise during surveys conducted in December 2019 and January 2020 (Sitkiewicz 2020). However, eight Dall's porpoises were observed on 2 days of in-water work during monitoring associated with the Ward Cove Cruise Ship Dock in March and April 2020 (Power Systems and Supplies of Alaska, 2020). Additionally, 28 Dall's porpoise were observed during ADOT&PF's Tongass Narrows marine mammal monitoring across 215 days (ADOT&PF 2021, 2023). ADOT&PF reported that the average group size across all years was 5.6 and the maximum group size was 10.

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 DPSs (and MMPA 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 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 eastern DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the eastern DPS.

There are several mapped and regularly monitored long-term Steller sea lion haulouts surrounding Ketchikan, such as West Rocks (36 miles (58 kilometers) from Ketchikan) or Nose Point (37 miles (60 kilometers) from Ketchikan), but none are known to occur within Tongass Narrows (Fritz *et al.* 2016). The nearest known Steller sea lion haulout is located approximately 20 miles (58 kilometers) west/northwest of Ketchikan on Grindall Island (Figure 4–1 in application). Summer counts of adult and juvenile sea lions at this haulout since 2000 have averaged approximately 191 individuals, with a range from 6 in 2009 to 378 in 2008. Only two winter surveys of this haulout have occurred. In March 1993, a total of 239 individuals were recorded, and in December 1994, a total of 211 individuals were recorded. No sea lion pups have been observed at this haulout during surveys. Although this is a limited and dated sample, it suggests that abundance may be consistent year-round at the Grindall Island haulout.

Steller sea lions occur in Tongass Narrows year-round, and anecdotal reports suggest an increase in abundance from March to early May during the herring spawning season, and another increase in late summer associated with salmon runs. Overall sea lion presence in Tongass Narrows tends to be lower in summer than in winter (Federal Highway Administration 2017). During summer, Steller sea lions may aggregate outside the project area, at rookery and haulout sites. During the 215 days of marine mammal monitoring that took place during construction of previous components of the Tongass Narrows Project, a total of 322 Steller sea lions were observed (ADOT&PF 2021, 2023). Average group size reported was 1.25 individuals and maximum group size observed was five individuals. At least one individual was observed during

each month that monitoring took place. Monitoring during construction of the Ward Cove Dock, recorded 181 individual sea lions on 44 days between February and September 2020 (Power Systems & Supplies of Alaska, 2020). Most sightings occurred in February (45 sightings of 88 sea lions) and March (34 sightings of 45 sea lions); the fewest number of sightings were observed in May (one sighting of one sea lion) (Power Systems & Supplies of Alaska, 2020).

Northern Elephant Seal

Northern elephant seals breed and give birth in California and Baja California, primarily on offshore islands (Stewart *et al.,* 1994). Spatial segregation in foraging areas between males and females is evident from satellite tag data (Le Beouf *et al.,* 2000). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific to feed on pelagic prey (Le Beouf *et al.,* 2000). Elephant seals spend a majority of their time at sea (average of 74.7 days during post breeding migration and an average of 218.5 days during the postmolting migration; Robinson *et al.,* 2012). Although northern elephant seals are known to visit the Gulf of Alaska to feed on benthic prey, they rarely occur on the beaches of Alaska.

Despite the low probability of northern elephant seals entering the project area, there have been recent reports of elephant seals occurring in and near the Tongass Narrows. Two northern elephant seals were observed during ADOT&PF's Tongass Narrows construction in 2022 (ADOT&PF 2021, 2023).

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Muto *et al.,* 2021). They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey (Womble *et al.,* 2009; Allen and Angliss, 2015).

Harbor seals in Tongass Narrows are recognized as part of the Clarence Strait stock. Distribution of the Clarence Strait stock ranges from the east coast of Prince of Wales Island from Cape Chacon north through Clarence Strait to Point Baker and along the east coast of Mitkof and Kupreanof Islands north to Bay Point, including Ernest Sound, Behm Canal, and Pearse Canal (Muto *et al.,* 2021). In the project area, they tend to be more abundant during spring, summer and fall months when salmon are present in Ward Creek. During marine mammal monitoring associated with ADOT&PF's previous Tongass Narrows construction activities, 550 harbor seals were observed with an average of 1.2 harbor seals per day and a maximum group size of 5. During pre- and post-blasting monitoring completed for the COK pinnacle rock blasting project a total of 21 harbor seal sightings of 24 individuals were observed over 76.2 hours (Sitkiewicz 2020). Additionally, information from PSOs associated with on-going construction indicate a small number of harbor seals are regularly sighted at about 820 feet (250 meters) from the Project location (Wyatt, personal communication).

There are two key harbor seal haulouts about 7.1 miles (11.5 kilometers) from the project area on a mid-channel island to the southeast of the project site. Each haulout was monitored in 2022 with 10 harbor seals present at one site and 50 harbor seals present at the other (Richland, personal communication).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take 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.

Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile driving and removal and DTH. The effects of underwater noise from ADOT&PF's proposed activities have the potential to result in Level A harassment and Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and use of DTH equipment. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; National Institute of Occupational Safety and Health (NIOSH) 1998; NMFS 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007).

Three types of hammers would be used on this project: Impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound Pressure Levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into to the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by the DTH method contain both a continuous, non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously.

The likely or possible impacts of ADOT&PF's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and DTH.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and DTH is the primary means by which marine mammals may be harassed from ADOT&PF's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007, 2019). In general, exposure to pile driving and DTH noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and DTH noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of

exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, 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)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *masking,* below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Behavioral Harassment—Exposure to noise from pile driving and removal and DTH also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; National Research Council (NRC) 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem

to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

Across 215 days between October 2020 and February 2021, May 2021 and February 2022, and March and December 2022, ADOT&PF documented observations of marine mammals during construction activities (*i.e.,* pile driving and removal and DTH) in Tongass Narrows (ADOT&PF 2023, 2022, 2023). According to ADOT's monitoring reports, potential takes by Level B harassment of 82 Steller sea lion, 100 harbor seals, 10 Dall's porpoise, 60 killer whale, 33 humpback whale; and 1 elephant seal were recorded during pile driving or DTH. Additionally, 1 potential take by Level A harassment of harbor seal was recorded. While in the Level B harassment zones, Steller sea lions and harbor seals were identified as traveling, foraging, swimming, milling, looking and sinking, vocalizing, and resting. Steller sea lions also dived, breached, slapped, and chuffed while harbor seal also played, hauled out, and entered the water.

Dall's porpoise and killer whales were observed milling and porpoising. Killer whales also swam, breached, and slapped; the humpback whale was observed traveling, diving, swimming, foraging, breaching, chuffing, milling and swimming away from in-water work. Given the project is a continuation of these previous activities in the same location, we expect similar behavioral responses of marine mammals to ADOT&PF's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.* 1996; Hood *et al.* 1998; Jessop *et al.* 2003; Krausman *et al.* 2004; Lankford *et al.* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range

of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

ADOT&PF 's proposed activities at the project area would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). ADOT&PF's construction activities in Tongass Narrows could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH, impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify a portion of Tongass Narrows and nearby waters where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

The area likely impacted by the project includes much of Tongass Narrows, but overall this area is relatively small compared to the available habitat in the surrounding area including Revillagigedo Channel, Behm Canal, and Clarence Strait. Pile installation/removal and DTH may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 25-ft radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to minimal for marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

In-water Construction Effects on Potential Prey—Construction activities would produce continuous (*i.e.,* vibratory pile driving and DTH) and intermittent (*i.e.,* impact driving and DTH) sounds. 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. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann 1999; Fay 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.* 1992; Skalski *et al.* 1992; Santulli *et al.* 1999; Paxton *et al.* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.* 2013; Wardle *et al.* 2001; Jorgenson and Gyselman, 2009; Cott *et al.* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.* 2012b; Casper *et al.* 2013).

The most likely impact to fish from pile driving and removal and DTH activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Revillagigedo Channel, Behm Canal, and Clarence Strait. Additionally, the COK is within Tongass Narrows and has a busy industrial water front, and human impact lessens the value of the area as foraging habitat. There are times of known seasonal marine mammal foraging in Tongass Narrows around fish

processing/hatchery infrastructure or when fish are congregating, but the impacted areas of Tongass Narrows are a small portion of the total foraging habitat available in the region. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect eulachon, herring, and juvenile salmonid migratory routes in the project area. Salmon and forage fish, like eulachon and herring, form a significant prey base for Steller sea lions and are major components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur only in the immediate vicinity of construction activities and to dissipate quickly with tidal cycles. Given the limited area affected and high tidal dilution rates any effects on fish are expected to be minor.

Additionally, the presence of transient killer whales means some marine mammal species are also possible prey (harbor seals, harbor porpoises). ADOT&PF's pile driving, pile removal and DTH activities are expected to result in limited instances of take by Level B harassment and Level A harassment on these smaller marine mammals. That, as well as the fact that ADOT&PF is impacting a small portion of the total available marine mammal habitat means that there would be minimal impact on these marine mammals as prey.

In summary, given the short daily duration of sound associated with individual pile driving and DTH events and the small area being affected relative to available nearby habitat, pile driving and DTH activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species or other prey. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take 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 acoustic sources (*i.e.,* impact and vibratory pile driving and removal and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans, phocids, and otariids because predicted auditory injury zones are larger than for other hearing groups. Auditory injury is unlikely to occur for other groups. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources. This take estimation includes disruption of behavioral patterns resulting directly in response to noise exposure (*e.g.,* avoidance), as well as the resulting indirectly form the associated impacts such as TTS or masking. ADOT&PF's proposed activity includes the use of continuous (vibratory pile driving/removal and DTH) and impulsive (impact pile driving and DTH) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ADOT&PF's proposed activity includes the use of impulsive (impact pile driving and DTH) and non-impulsive (vibratory pile driving/removal and DTH) sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,\text{0-pk,flat}}$: 219 dB; $L_{E,p,\text{LF,24h}}$: 183 dB	*Cell 2:* $L_{E,p,\text{LF,24h}}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,\text{0-pk,flat}}$: 230 dB; $L_{E,p,\text{MF,24h}}$: 185 dB	*Cell 4:* $L_{E,p,\text{MF,24h}}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,\text{0-pk,flat}}$: 202 dB; $L_{E,p,\text{HF,24h}}$: 155 dB	*Cell 6:* $L_{E,p,\text{HF,24h}}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,\text{0-pk,flat}}$: 218 dB; $L_{E,p,\text{PW,24h}}$: 185 dB	*Cell 8:* $L_{E,p,\text{PW,24h}}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,\text{0-pk,flat}}$: 232 dB; $L_{E,p,\text{OW,24h}}$: 203 dB	*Cell 10:* $L_{E,p,\text{OW,24h}}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,\text{0-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, and DTH).

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles (material and diameter), hammer type, and the physical environment (*e.g.,* sediment type) in which the activity takes place. The ADOT&PF evaluated SPL measurements available for certain pile types and sizes from similar activities elsewhere to determine appropriate proxy levels for their proposed activities. The ADOT&PF also initially referred to preliminary results from a sound source verification study to determine SPLs for DTH of 8-inch tension anchors and Transmission Loss values (TLs) for all DTH activities. As discussed in the Summary of Request section above, a Sound Source Verification (SSV) report detailing sound source values and TL coefficients collected at the project site was subsequently submitted.

To determine appropriate proxy SPLs for impact and vibratory pile driving of all pile types, NMFS completed a comprehensive review of source levels relevant to Southeast Alaska to generate regionally-specific source levels. NMFS compiled all available data from Puget Sound and Southeast Alaska and adjusted the data to standardize distance from the measured pile to 10 m.. NMFS then calculated average source levels for each project and for each pile type. NMFS weighted impact pile driving project averages by the number of strikes per pile following the methodology in Navy (2015). The source levels for these various pile types, sizes and methods are listed in Table 5. Additionally, ADOT&PF requested, and NMFS agreed, to use the 24-inch sound source values for impact or vibratory pile driving of 14-inch H-piles, because the source value of smaller piles of the same general type (steel) are not expected to exceed a larger pile.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. NMFS (2022) recommended guidance on DTH systems (*https://media.fisheries.noaa.gov/2022-11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf*) outlines its recommended source levels for DTH systems. NMFS has applied that guidance in this analysis (see Table 5 for NMFS' proposed source levels). Note that the values in this table represent the SPL referenced to a distance of 10 m (33 ft) from the source.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}10(R1/R2),$$

Where:

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for the Tongass Narrows are not available for vibratory pile installation and removal and impact pile driving; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds for these activities and associated pile types. In the case of DTH activities, ADOT&PF conducted SSV at the project site for DTH of 24-inch rock sockets and 8-inch tension anchors. NMFS reviewed the TL data from this monitoring and has incorporated the most conservative transmission loss values measured for each pile type at the project site in its analysis herein (Table 5).

TABLE 5—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DTH, AND VIBRATORY PILE REMOVAL

	RMS SPL (dB re 1 µPa)	SEL_{ss} (dB re 1 µPa² sec)	Peak SPL (dB re 1 µPa)	References levels (TL)	TL coefficient [1]
Vibratory Hammer					
30-inch steel piles	166	NA	NA	NMFS Analysis—C. Hotchkin April 24, 2023.	15
24-inch steel piles	163	NA	NA	NMFS Analysis—C. Hotchkin April 24, 2023.	15
Steel 14″ H-piles [3]	163	NA	NA	24-inch as proxy	15
DTH of Rock Sockets and Tension Anchors—Continuous					
24-inch (Rock Socket)	167	NA	NA	Heyvaert & Reyff 2021; (Reyff and Ambaskar 2023).	19.5
8-inch DTH (Tension Anchor)	156	NA	NA	Reyff & Heyvaert 2019; Reyff 2020; (Reyff and Ambaskar 2023).	17.1
Impact Hammer					
30-inch steel piles	195	183	210	NMFS Analysis—C. Hotchkin April 24, 2023.	15
24-inch steel piles	190	177	203	Caltrans 2015, Caltrans 2020	15
Steel 14″ H-piles [2]	190	177	203	24-inch as proxy	15
DTH of rock sockets and tension anchors—Impulsive					
24-inch (Rock Socket)	NA	159	184	Heyvaert & Reyff 2021; (Reyff and Ambaskar 2023).	19.9
8-inch (Tension anchor)	NA	144	170	Reyff 2020; (Reyff and Ambaskar 2023).	17.1

[1] NMFS recommends a default transmission loss of $15*\log_{10}(R)$ when site-specific data are not available (NMFS, 2020; NMFS, 2022).
[2] For 14-inch H piles, NMFS uses sound source level data from 24-inch piles as a conservative proxy.
NOTE: all SPLs are unattenuated and represent the SPL referenced to a distance of 10 m from the source; NA = Not applicable; dB re 1 µPa = decibels (dB) referenced to a pressure of 1 microPascal, measures underwater SPL; dB re 1 µPa2-sec = dB referenced to a pressure of 1 microPascal squared per second, measures underwater SEL.

All Level B harassment isopleths are reported in Table 6 below. Of note, based on the geography of Tongass Narrows and the surrounding islands, sound would not reach the full distance of the Level B harassment isopleth in most directions. Generally, due to interaction with land, only a thin slice of the possible area would be ensonified to the full distance of the Level B harassment isopleth.

TABLE 6—LEVEL B HARASSMENT ISOPLETHS BY ACTIVITY AND PILE SIZE

Activity	Pile diameter (inch)	Level B harassment isopleth (m)
Vibratory Installation and Removal	30	11,659
	24	7,365
	14	
DTH Rock Sockets	24	2,572
DTH Tension Anchor	8	1,274
Impact Installation	30	2,154
	24	1,000
	14	

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving or removal or DTH using any of the methods discussed above, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur

PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in Table 7 and Table 8.

TABLE 7—NMFS USER SPREADSHEET INPUTS

	Vibratory pile driving		DTH		Impact	
	30-inch steel piles	24-inch steel piles or steel H-pile	Rock socket (24-inch)	Tension anchor (8-inch)	30-inch steel piles	24-inch steel piles or steel H-pile
	Installation or removal	Installation or removal	Installation	Installation	Installation	Installation
Spreadsheet Tab Used	A.1) Vibratory Pile Driving.	A.1) Vibratory Pile Driving.	E.2) DTH Pile Driving.	E.2) DTH Pile Driving.	E.1) Impact Pile Driving.	E.1) Impact Pile Driving.
Source Level (SPL)	166 RMS	163 RMS	167 RMS, 159 SEL	156 RMS, 144 SEL	183 SEL	177 SEL.
Transmission Loss Coefficient.	15	15	19.5, 19.9	17.1, 17.1	15	15.
Weighting Factor Adjustment (kHz).	2.5	2.5	2	2	2	2.
Activity Duration (hours) within 24 hours.	*0.5–6	*0.5–8	1–8	1–8.		
Strike rate strike per second.			10	19.		
Number of strikes per pile.					50 (temporary); 200 (permanent).	50 (temporary); 200 (permanent).
Number of piles per day.	1–6	1–8	1	1	1–3	1–3.
Distance of sound pressure level measurement.	10	10	10	10	10	10.

*A range of activity durations (vibratory and DTH), strikes per pile (impact), piles per day are listed because ADOT&PF anticipates that they can install or remove piles of the same size at different rates at different sites. Duration estimates for DTH assume that multiple rock sockets and tension anchors would be installed each day, with a maximum daily duration of 8 hours.

Level A harassment thresholds for impulsive sound sources (impact pile driving and DTH) are defined for both SELcum and Peak SPL with the threshold that results in the largest modeled isopleth for each marine mammal hearing group used to establish the Level A harassment isopleth. In this project, Level A harassment isopleths based on SELcum were always larger than those based on Peak SPL. It should be noted that there is a duration component when calculating the Level A harassment isopleth based on SELcum, and this duration depends on the number of piles that would be driven in a day and strikes per pile. For some activities, ADOT&PF has proposed to drive variable numbers of piles per day throughout the project (See ''Average Piles per Day (Range)'' in Table 1). NMFS accounted for this variability in its analysis. For each activity, ADOT&PF provided the minimum and maximum potential durations of the activity. In some cases the difference in the Level A harassment zone size between the minimum and maximum duration anticipated for an activity for a given hearing group is quite large. ADOT&PF expressed concerns about implementing the largest Level A harassment zones for an activity on days where activity levels would be much lower, particularly given that the shutdown zones for an activity (Table 10) are based upon the Level A harassment zone sizes. Therefore, for low frequency cetaceans and phocids, in order to provide flexibility while ensuring the number of Level A harassment zones and associated shutdown zones are manageable, NMFS proposes two Level A harassment isopleths for a given activity in cases where the differences between zone sizes associated with the minimum and maximum potential activity duration spans ≥100 m. At the beginning of each pile driving day, ADOT&PF would determine the maximum number or duration that piles would be driven that day and implement the Level A harassment zone associated with that amount of activity.

TABLE 8—DISTANCES TO LEVEL A HARASSMENT ISOPLETHS, BY HEARING GROUP, AND LEVEL B HARASSMENT ZONES, DURING PILE INSTALLATION AND REMOVAL

Activity	Pile diameter(s) (inches)	Max. daily duration/ number of piles*	Level A harassment isopleths, by hearing group (meters)					Level B harassment isopleth (meters; hearing groups)
			LF	MF	HF	PW	OW	
			Minke whale, fin whale, humpback whale, gray whale	Pacific white-sided dolphin, killer whale	Harbor porpoise, dall's porpoise	Harbor seal, northern elephant seal	Steller sea lion	
Vibratory Installation or Removal.	30	≤360	48.6	4.3	71.8	29.5	2.1	11,659
	24 or 14	≤480	37.1	3.3	54.9	22.6	1.6	7,356
DTH (Rock Socket)	24	≤120 121–180 181–480	210.3 344.3	27.8	392.8	107.1 214.9	29.8	2,572
DTH (Tension Anchor)	8	≤480	118.7	6.4	138.4	68.6	6.9	

TABLE 8—DISTANCES TO LEVEL A HARASSMENT ISOPLETHS, BY HEARING GROUP, AND LEVEL B HARASSMENT ZONES, DURING PILE INSTALLATION AND REMOVAL—Continued

Activity	Pile diameter(s) (inches)	Max. daily duration/ number of piles *	Level A harassment isopleths, by hearing group (meters)					Level B harassment isopleth (meters; hearing groups)
			LF	MF	HF	PW	OW	
			Minke whale, fin whale, humpback whale, gray whale	Pacific white-sided dolphin, killer whale	Harbor porpoise, dall's porpoise	Harbor seal, northern elephant seal	Steller sea lion	
Impact, 200 strikes	30	1	542.1	25.3	846.2	182.8	27.7	2,154
		2				380.2		
		3	710.4					
	24 or 14	1	136.0	10.1	336.9	72.8	11.0	1,000
		2	282.8			151.4		
		3						
Impact, 50 strikes	24 or 14	1–3	112.2	4.0	133.7	60.1	4.4	1,000

* For low frequency cetaceans and phocids, in cases where the Level A harassment zone spanned ≥100 m between the minimum and maximum duration for the same activity, NMFS analyzed a shorter activity duration to allow for flexibility.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density, or group dynamics of marine mammals, that will inform the take calculations. Additionally, we describe how the occurrence information is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Note that take estimates included in ADOT&PF's application reflect 152 construction days rather than 131 (see Summary of Request section, in which it is described that one site has been completed since submission of the application). A summary of proposed take, including a percentage of population for each of the species, is shown in Table 9.

Minke Whale

There are no known occurrences of minke whales within the project area. No minke whales where reported during ADOT&PF's previous construction activities at the project site (ADOT&PF 2021, 2023), nor during other recent projects in the Tongass Narrows (*e.g.,* COK Rock Pinnacle Blasting Project, Sitkiewicz 2020, Ward Cove Cruise Ship Dock in 2020, Power Systems and Supplies of Alaska, 2020). However, since their range extends into the project area, and they have been observed in southeast Alaska, including in Clarence Strait (Dahlheim *et al.,* 2009), it is possible the species could occur in the project area. Still, future observations of minke whale in the project area are expected to be rare.

ADOT&PF conservatively requested take by Level B harassment of three minke whales every 4 months across the 12 months that the IHA is active. NMFS concurs with ADOT&PF's estimated group size and frequency, but finds it more appropriate to estimate take according to the number of actual months in which construction is proposed. As such, NMFS conservatively proposes to authorize four takes by Level B harassment (3 minke whales × 1.25 months = 4 takes by Level B harassment).

ADOT&PF is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the infrequent occurrence of minke whales entering the project area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of minke whale. Therefore, ADOT&PF did not request take by Level A harassment of minke whale, nor is NMFS is proposing to authorize any.

Fin Whale

Fin whales typically inhabit deep, offshore waters and often travel in open seas away from coasts, and are often observed in social groups of two to seven. However, a single fin whale was recently observed in Clarence Strait (Scheurer, personal communication). Since the ensonified area extends to the mouth of Tongass Narrows, where it meets Clarence Strait, there is a chance that fin whale could occur in the project area during construction. As such, NMFS conservatively proposes to authorize two takes by Level B harassment of fin whale.

ADOT&PF is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, especially given the rare occurrence of fin whale in the surrounding area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of fin whale. Therefore, ADOT&PF did not request take by Level A harassment of fin whale, nor is NMFS is proposing to authorize any.

Humpback Whale

While no systematic studies have documented humpback whale abundance near Ketchikan, anecdotal information suggests that this species is present in low numbers year-round in Tongass Narrows. Additionally, during ADOT&PF's 215 days of monitoring associated with previous construction, 80 humpback whales were observed, or 0.37 humpback whales per day (ADOT&PF 2021, 2023). According to ADOT&PF, the average group size was 1.25 humpback whales, and the maximum group size was 4.

ADOT&PF conservatively estimates, and NMFS concurs, that one humpback whale may occur in the Level B harassment zone each day of proposed in-water work (1 humpback whale x 131 days = 131 takes by Level B harassment).

ADOT&PF is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of humpback whale. Therefore, ADOT&PF did not request take by Level A harassment of humpback whale, nor is NMFS is proposing to authorize any.

Gray Whale

Gray whales are rare in the project area and unlikely to occur in Tongass Narrows. They were not observed during the Dahlheim *et al.* (2009)

surveys of Alaska's inland waters with surveys conducted in the spring, summer and fall months. No gray whales where reported during ADOT&PF's previous construction activities at the project site (ADOT&PF 2021, 2023), nor during other recent projects in the Tongass Narrows (*e.g.,* COK Rock Pinnacle Blasting Project, Sitkiewicz 2020; Ward Cove Cruise Ship Dock in 2020, Power Systems and Supplies of Alaska, 2020). However a gray whale could migrate through or near the project, during November especially. Gray whales are generally solitary and travel together, alone, or in small groups.

ADOT&PF requested 24 takes by Level B harassment of gray whales (1 group × 2 gray whales × 12 months that the IHA is active). NMFS concurs with ADOT&PF's estimated group size and frequency, but finds it more appropriate to base take estimates on proposed duration of in-water work. As such, NMFS proposes to authorize 10 takes by Level B harassment (1 group × 2 gray whales × 5 months = 10 takes by Level B harassment).

ADOT&PF is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the low occurrence of gray whales in the project area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of gray whale. Therefore, ADOT&PF did not request take by Level A harassment of gray whale, nor is NMFS is proposing to authorize any.

Pacific White-Sided Dolphin

Pacific white-sided dolphins were not observed during the 215 days of marine mammal monitoring associated with ADOT&PF's previous construction activities at this site (ADOT&PF 2021, 2023). There were also no sightings of Pacific white-sided dolphins during previous monitoring conducted during other recent construction projects in the Tongass Narrows (Sitkiewicz 2020, Power Systems and Supplies of Alaska, 2020).

While rare in the inside passageways of Southeast Alaska, a group of 164 Pacific white-sided dolphins were observed in the Dixon entrance to the south of Tongass Narrows during aerial surveys in 1997 (Muto *et al.* 2018), and this species was also documented in Revillagigedo Channel, Behm Canal, and Clarence Strait during surveys conducted from April to May between 1991 and 1993 (Dahlheim and Towell 1994). Finally, Dalheim *et al.* (2009) frequently encountered Pacific white-sided dolphins in Clarence Strait. Observations were noted most typically in open strait environments, near the open ocean. Mean group size was over 20, with no recorded winter observations nor observations made in the Nichols Passage or Behm Canal, located on either side of the Tongass Narrows. This observational data, combined with anecdotal information, indicates that while Pacific white-sided dolphins are rare in the area, they could occur in the project area during construction.

ADOT&PF requested Level B harassment take of one group of 50 Pacific white-sided dolphins. However, to remain consistent with mean groups sizes detected near Tongass Narrows (Dalheim *et al.,* 2009), NMFS finds it more appropriate to propose to authorize three groups of 20 pacific white sided dolphins (60 takes by Level B harassment of Pacific white-sided dolphin).

ADOT&PF is planning to implement shutdown zones for mid-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Additionally, the Level A harassment isopleths for mid-frequency cetaceans are quite small, and therefore, shutdown zones should be easily implemented. Therefore, especially in combination with the low occurrence of pacific white-sided dolphins in the project area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of Pacific white-sided dolphin. Therefore, ADOT&PF did not request take by Level A harassment of Pacific white-sided dolphin, nor is NMFS is proposing to authorize any..

Killer Whale

While no systematic studies of killer whales have been conducted in or around Tongass Narrows, killer whales are observed in Tongass Narrows year-round, and anecdotal reports suggest they are most common during the summer Chinook salmon run (May-July) (84 FR 36891, July 30, 2019). Across the 215 days of monitoring during ADOT&PF's previous Tongass Narrows construction activities, a total of 78 killer whales were observed, for an observation rate of 0.36 per day (ADOT&PF 2021, 2023). According to ADOT&PF, the average group size observed was 4.6 killer whales and the maximum group size was 8.

While ADOT&PF requested 180 takes by Level B harassment [(1 group × 12 killer whales × 9 months) + (2 groups × 12 killer whales × 3 months = 180 takes by Level B harassment)], NMFS finds it more appropriate to base take estimates off the maximum group size (8 killer whales) observed during monitoring of previous construction activities and the proposed duration of in-water work (5 months). As such, NMFS proposes to authorize 64 takes by Level B harassment [[(2 pods × 8 killer whales × 3 months) + (1 pod × 8 killer whales × 2 months) = 64 takes by Level B harassment)].

ADOT&PF is planning to implement shutdown zones for mid-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Additionally, the Level A harassment isopleths for mid-frequency cetaceans are quite small and therefore shutdown zones should be easily implemented. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of killer whale. Therefore, ADOT&PF did not request take by Level A harassment of killer whale, nor is NMFS is proposing to authorize any.

Harbor Porpoise

Abundance data for harbor porpoise in Southeast Alaska were collected during 18 seasonal surveys spanning 22 years, from 1991 to 2012 (Dahlheim *et al.* 2015). The project area falls within the Clarence Strait to Ketchikan region, as identified by this study for the survey effort. Harbor porpoise densities in this region in summer were low, ranging from 0.01 to 0.02 harbor porpoises/kilometers^2. During ADOT&PF's 215 days of monitoring during previous construction activities at this project site, the daily average observations of harbor porpoise in the project area was 0.1 (ADOT&PF 2021, 2023). According to ADOT&PF, the maximum group size observed during this monitoring was five.

ADOT&PF estimates that two groups of five harbor porpoise may occur in the Level B harassment zone across the 12 months that the IHA is active. NMFS concurs with ADOT&PF's estimated group size but finds it appropriate to increase the frequency of occurrence estimate in the Level B harassment zone from two groups per month to three groups per month of work. Additionally, NMFS finds it more appropriate to estimate take by Level B harassment according to proposed duration of in-water work (3 groups × 5 harbor porpoises × 5 months = 75 takes by Level B harassment). Additionally, ADOT&PF requested take by Level A harassment of one group of five harbor porpoise every 4 months across 12 months that the IHA is active. However, NMFS finds it more appropriate to estimate take by Level A harassment

according to the number of months in which the Level A harassment zone may extend beyond the proposed shutdown zone (*i.e.,* 2.9 months, when DTH systems may be employed to install 24-inch piles, or 24-inch and 30-inch piles may be installed with an impact pile driver (200 strikes)]. As such, NMFS proposes to authorize 15 takes by Level A harassment of harbor porpoise (1 group × 5 harbor porpoise × 2.9 months = 15 takes by Level B harassment) and 60 takes by Level B harassment ((3 groups × 5 harbor porpoise × 5 months) − 15 takes by Level A harassment = 60 takes by Level B harassment).

Dall's Porpoise

Dall's porpoise have occasionally been observed during previous construction projects completed in Tongass Narrows (Power Systems and Supplies of Alaska, 2020), including during ADOT&PF's 215 days of monitoring (ADOT&PF 2021, 2023). ADOT&PF reported that the average group size observed was 5.6 and the maximum group size was 10. To estimate take, ADOT&PF has assumed that Dall's porpoise may occur in pods of 15 and across the 12 months that the IHA is active. NMFS finds it more appropriate to base take estimates off the maximum group size (10 Dall's porpoise) observed during monitoring of previous construction activities and according to estimated duration of proposed pile driving and DTH activities.

As such, while ADOT estimates that one pod of 15 Dall's porpoise may occur within the Level B harassment zone across each of the 12 months that the IHA would be active, NMFS finds it more appropriate to conservatively estimates that two pods of 10 Dall's porpoise may occur in the Level B harassment zone each month in which in-water work is proposed (2 pod × 10 Dall's porpoise × 5 months = 100).

Additionally, ADOT&PF has estimated that one pod of 15 Dall's porpoise may occur within the Level A harassment zone across the 12 months that the IHA would be active. However, NMFS finds it more appropriate to estimate 10 takes by Level A harassment of Dall's porpoise across the 2.9 months in which the Level A harassment zone may extend beyond the shutdown zone for this species, which could occur when DTH systems are employed to install 24-inch piles or an impact pile driver (200 strikes) is used to install 24-inch and 30-inch piles (1 group × 10 Dall's porpoise = 10 takes by Level A harassment). Finally, take by Level B harassment proposed for authorization has been calculated as the total calculated Dall's porpoise takes by Level B harassment minus the takes by Level A harassment (100 takes by Level B harassment − 10 takes by Level A harassment = 90 takes by Level B harassment).

Steller Sea Lion

Steller sea lions may be found in Tongass Narrows year-round, with anecdotal reports suggesting an increase in abundance from March to early May during the herring spawning season, and another increase in late summer associated with salmon runs. During the 215 days of marine mammal monitoring that took place during construction of previous components of the Tongass Narrows Project, a total of 322 Steller sea lions were observed (ADOT&PF 2021, 2023). According to ADOT&PF, the average group size was 1.25 individuals and maximum group size observed was five individuals. At least one Steller sea lion was observed during each month that monitoring took place. Monitoring during construction of the nearby Ward Cove Dock recorded 4.1 individuals per day (Power Systems & Supplies of Alaska, 2020).

ADOT&PF estimates that one group of 10 Steller sea lions may be taken by Level B harassment each day that in-water work is proposed. Based on ADOT&PF's 215 days of project-related monitoring, NMFS finds it more appropriate to estimate that one group of five Steller sea lions may be present in the Level B harassment zone each day (1 group × 5 Steller sea lion × 131 construction days = 655 takes by Level B harassment).

ADOT&PF is required to implement a shutdown zone that exceeds the Level A harassment zone for Steller sea lions during all project activities. However, ADOT&PF expects that Steller sea lions could enter the Level A harassment zone undetected on rare occasions. As such, ADOT&PF requests take by Level A harassment of 5 percent of Steller sea lions authorized for take by Level B harassment. NMFS concurs that, given the various structures along the shoreline in the project area, Steller sea lions could enter the Level A harassment zone and remain in the zone undetected for a long enough duration to incur PTS before a shutdown occurs. However, NMFS anticipates that 5 percent of the take by Level B harassment would result in an overestimate of Level A harassment. NMFS anticipates that10 Steller sea lions could enter the Level A harassment zone and remain in the zone undetected for a long enough duration to incur PTS before a shutdown occurs across the 131 days of proposed in-water work. As such, NMFS proposes to authorize 10 takes by Level A harassment and 645 takes by Level B harassment (1 group × 5 individuals × 131 construction days − 10 takes by Level A harassment = 645 takes by Level B harassment).

Northern Elephant Seal

Although northern elephant seals are known to visit the Gulf of Alaska to feed on benthic prey, they rarely occur on the beaches of Alaska. Despite the low probability of northern elephant seals entering the project area, there have been recent reports of elephant seals occurring in and near the Tongass Narrows, and two northern elephant seals were observed during ADOT&PF's Tongass Narrows construction in 2022. As such, ADOT&PF requests take by Level B harassment of one elephant seal per 6-day work week. NMFS concurs that one take by Level B harassment per work week is appropriate. However, because ADOT&PF proposes 7-day work weeks, NMFS calculates the total number of work weeks to occur within 131 construction days as 19 weeks rather than ADOT&PF's proposed 22 weeks (1 Northern elephant seal × 19 work weeks = 19 takes by Level B harassment).

For most project activities, the proposed shutdown zone would exceed the Level A harassment zone for Northern elephant seal. However, the Level A harassment zone may extend beyond the proposed shutdown zone for this species on 37 days (when DTH systems may be employed to install 24-inch piles or 30-inch piles may be installed with an impact pile driver (200 strikes). While unlikely given the already low occurrence of Northern elephant seals, on those days, a Northern elephant seal could occur in the Level A harassment zone and remain in the zone for a long enough duration to incur PTS, and NMFS conservatively proposes to authorize five takes by Level A harassment. As such, NMFS proposes to authorize 14 takes by Level B harassment (1 Northern elephant seal × 19 work weeks − 5 takes by Level A harassment = 14 takes by Level B harassment).

Harbor Seal

During marine mammal monitoring associated with ADOT&PF's previous Tongass Narrows construction activities, 550 harbor seals were observed with an average of 1.2 harbor seals per day and a maximum group size of 5. The COK pinnacle rock blasting project recorded a total of 21 harbor seal sightings of 24 individuals over 76.2 hours of pre- and

post-blast monitoring (Sitkiewicz 2020). Additionally, information from PSOs associated with on-going construction indicates that a small number of harbor seals are regularly sighted at about 820 feet (250 meters) from the project location (Wyatt, personal communication). Additionally, there are two key harbor seal haulouts about 7.1 miles (11.5 kilometers) from the project area on a mid-channel island to the southeast of the project site. Each haulout was monitored in 2022 with 10 harbor seals observed at one haulout and 50 harbor seals observed at the other (Richland personal communication).

ADOT&PF estimates, and NMFS concurs, that up to 2 groups of 3 harbor seals could enter the Level B harassment zone per day (2 groups × 3 harbor seals × 131 days = 786). Further, NMFS also estimates that half the harbor seals occurring at the haulout sites within the project area could enter the Level B harassment zone on days when the ensonified area (during 30″ vibratory pile driving) reaches these haulout sites (30 harbor seals × 13 days = 390).

ADOT&PF also estimates that 1 harbor seal could be taken by Level A harassment on each day of in-water work (1 harbor seal × 131 days =131 takes by Level A harassment). For most project activities, the shutdown zone exceeds the Level A harassment zone. However, when an impact pile driver (200 strikes) is used to install 30-inch piles, the Level A harassment zone exceeds the associated shutdown zone. This could occur on 13 days. NMFS anticipates that three harbor seals could be taken by Level A harassment on each day that the Level A harassment isopleth for this species extends beyond the shutdown zone. Therefore, NMFS proposes to authorize 39 takes by Level A harassment (3 harbor seal × 13 days = 39 takes by Level A harassment) and 1,137 takes by Level B harassment (786 takes by Level B harassment + 390 takes by Level B harassment − 39 takes by Level A harassment = 1,137 takes by Level B harassment).

TABLE 9—PROPOSED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Proposed authorized take		Proposed take as a percentage of stock abundance
		Level B harassment	Level A harassment	
Minke whale	Alaska	4	0	
Fin whale	Northeast Pacific	2	0	0.1
Humpback whale	Central North Pacific	131	0	1.3
Gray whale	Eastern North Pacific	10	0	0.04
Pacific white-sided dolphin	North Pacific	60	0	0.2
Killer whale	Eastern North Pacific Alaska Resident	64	0	3.3
	Eastern North Pacific Northern Resident			21.2
	West Coast Transient			16.3
Harbor porpoise	Southeast Alaska	60	15	5.8
Dall's porpoise	Alaska	90	10	0.8
Steller sea lion	Eastern U.S	645	10	1.5
Northern Elephant seal	California Breeding	14	5	<0.1
Harbor seal	Clarence Strait	1,137	39	4.3

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. 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.

ADOT&PF must ensure that construction supervisors and crews, the monitoring team and relevant ADOT&PF staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Protected Species Observers

ADOT&PF must employ PSOs and establish monitoring locations as described in the NMFS-approved Marine Mammal Monitoring Plan and Section 5 of the IHA. ADOT&PF must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all vibratory pile driving and removal and DTH, ADOT&PF must employ at least three PSOs. For all impact pile driving, ADOT&PF must employ at least two PSOs. The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.,* pre-

clearance monitoring) through 30 minutes post-completion of pile driving or DTH activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 10 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. Further, while not a requirement in the IHA, the 2019 Biological Opinion requires that if a work stoppage occurs and PSOs do not monitor the boundaries of the Level B harassment zone continuously during the work stoppage, the entire Level B harassment zone must be surveyed again for the presence of ESA-listed species before work may resume. Additionally, the 2019 Biological Opinion requires that in-water activities take place only between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals and when the entire shutdown zone and adjacent waters are visible (*e.g.,* monitoring effectiveness is not reduced due to rain, fog, snow, etc.). The 2019 Biological Opinion allows for pile driving to continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization for the evening. PSO(s) will continue to observe shutdown and monitoring zones during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones. As noted in the Endangered Species Act section, the Alaska Region has reinitiated Section 7 consultation, and these measures from the 2019 Biological Opinion are subject to change.

Soft Start

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. ADOT&PF must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Shutdown Zones

For all pile driving/removal and DTH activities, ADOT&PF will establish shutdown zones (Table 10). The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones vary based on the activity type and duration and marine mammal hearing group (Table 10). In most cases, shutdown zones are based on the estimated Level A harassment isopleth distances for each hearing group. However, in cases where ADOT&PF asserted that it would be impracticable to shut down at the Level A harassment isopleth due to excessive work stoppages, a smaller shutdown zone is proposed (*e.g.,* for high-frequency cetaceans and phocids during DTH rock socketing of 24-inch piles). Note that some of the proposed shutdown zones differ from those proposed by the ADOT&PF in their application (see Table 6–5 of ADOT&PF's application) due to our incorporation of sound source levels and DTH TL coefficients from ADOT&PF's SSV report.

ADOT&PF anticipates that the maximum amount of activity within a given day may vary significantly (Table 7), with large differences in maximum zones sizes possible (Table 8). Given this uncertainty and concerns related to ESA-listed humpback whales and fin whales, and practicability concerns with shutting down, ADOT&PF proposes a tiered system to identify and monitor the appropriate Level A harassment zones and shutdown zones for large frequency cetaceans and phocids. This tiered system is based on the maximum expected number of piles to be installed (impact or vibratory pile driving) or the maximum expected DTH duration in a given day. At the start of each work day, ADOT&PF will determine the maximum scenario possible for that day (according to the defined duration intervals in Tables 8 and 10), which will determine the appropriate Level A harassment isopleth and associated shutdown zone for that day. This Level A harassment zone (Table 8) and associated shutdown zone (Table 10) must be implemented for the entire work day.

The placement of PSOs during all pile installation and removal, and DTH activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zones are visible during pile installation. If a marine mammal is observed entering or within the shutdown zones indicated in Table 10, pile driving must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 10) or 15 minutes (non-ESA-listed species) or 30 minutes (humpback whales and fin whales) have passed without re-detection of the animal. Further, pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

ADOT&PF must also avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions.

TABLE 10—PROPOSED SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Activity	Pile diameter(s) (inches)	Duration (min; vibratory/ DTH)/# of piles (impact)	Shutdown distances (m)					Level B harassment isopleth (m)
			LF	MF	HF	PW	OW	
Vibratory Installation or Removal, temporary and permanent.	30 24 or 14	≤360 ≤480	50 40	10 10	80 60	30 30	10 10	11,659 7,365
DTH (Rock Socket)	24	≤120 121–180 181–480	220 350	30	300	110 220	30	2,572
DTH (Tension Anchor)	8	≤480	170	10	140	70	10	1,274

TABLE 10—PROPOSED SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES—Continued

Activity	Pile diameter(s) (inches)	Duration (min; vibratory/ DTH)/# of piles (impact)	Shutdown distances (m)					Level B harassment isopleth (m)
			LF	MF	HF	PW	OW	
Impact permanent	30	1	550	30	300	190	30	2,154
		2				300		
		3	720					
	24 or 14	1	140	10	300	80	20	1,000
		2	290			160		
		3						
Impact, temporary	24 or 14	1–3	120	10	140	60	10	1,000

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted by qualified, NMFS-approved PSOs, who will be present during all pile installation and removal activities, including vibratory, impact, and DTH methods, in according with the following:

• PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA;

• Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA;

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

• PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs should 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 of 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.

ADOT&PF must employ two PSOs during all impact pile driving. ADOT&PF must employ three PSOs during all vibratory pile driving and DTH. A minimum of one PSO (the lead PSO) must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the harassment zones as possible. The observation points of the additional PSOs may vary depending on the construction activity and location of the piles. During impact pile driving, the second PSO would select the best location to observe as much of the Level A harassment and Level B harassment zones as possible. To select the best observation locations during vibratory installation and removal and DTH activities, prior to start of construction, the lead PSO will stand at the construction site to monitor the shutdown zones while two or more PSOs travel in opposite directions from the project site along Tongass Narrows until they have reached the edge of the

Level B harassment zone, where they will identify suitable observation points from which to observe. If visibility deteriorates so that the entire width of Tongass Narrows at the harassment zone boundary is not visible, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales or fin whales entering or within the harassment zone are detected by PSOs.

PSOs must record all observations of marine mammals, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory or DTH), the total equipment duration for vibratory installation/removal or DTH for each pile or hole and total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species;
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

ADOT&PF must also submit all PSO datasheets and/or raw sighting data with the draft report, as specified in condition 6(b) of this IHA.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS 24-hour Stranding Hotline as soon as feasible. If the death or injury was clearly caused by the specified activity, ADOT&PF must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 2, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving and DTH activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals.

Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species Level A harassment, from underwater sounds generated by pile driving and DTH. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level B harassment or Level A harassment, identified above, while activities are underway.

NMFS does not anticipate that serious injury or mortality will occur as a result of ADOT&PF's planned activity given the nature of the activity, even in the absence of required mitigation. Further, no take by Level A harassment is anticipated for Pacific white-sided dolphin, killer whale, humpback whale, gray whale, fin whale, or minke whale, due to the likelihood of occurrence and/or required mitigation measures. As stated in the mitigation section, ADOT&PF would implement shutdown zones that equal or exceed many of the Level A harassment isopleths shown in Table 10. Take by Level A harassment is authorized for some species (Steller sea lion, harbor seal, northern elephant seal, harbor porpoise, and Dall's porpoise) to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment, and in some cases, to account for the possibility that an animal could enter a shutdown zone without detection given the various obstructions along the shoreline, and remain in the Level A harassment zone for a duration long enough to be taken by Level A harassment before being observed and a shutdown occurring. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here is not expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. The intensity and duration of take by Level A harassment and Level B harassment would be minimized through use of mitigation measures described herein. . Further the amount of take authorized is small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removal, and DTH at the sites in Tongass Narrows are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not visually observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH would occur for only a portion of the project's duration and often on nonconsecutive days, any harassment would be temporary. Additionally, many of the species present in Tongass Narrows would only be present temporarily based on seasonal patterns or during transit between other habitats. These species would be exposed to even shorter periods of noise-generating activity, further decreasing the impacts.

As previously described, a UME has been declared for gray whales. However, we do not expect the takes proposed for authorization herein to exacerbate the ongoing UME. No serious injury or mortality of gray whales is expected or proposed for authorization, and take by Level B harassment is limited (10 takes over the duration of the authorization). As such, the proposed take by Level B harassment of gray whale would not exacerbate or compound upon the ongoing UME.

For all species except humpback whales, there are no known BIAs near the project zone that will be impacted by ADOT&PF's planned activities. For humpback whales, the inland waters of Southeast Alaska is a seasonal feeding BIA from May through September (Wild *et al.,* 2023), however, the mouth of Tongass Narrows is a small passageway and represents a very small portion of the total available habitat. Also, while southeast Alaska is considered an important area for feeding humpback whales during this time, it is not currently designated as critical habitat for humpback whales (86 FR 21082, April 21, 2021).

More generally, there are no known calving or rookery grounds within the project area, but anecdotal evidence from local experts shows that marine mammals are more prevalent in Tongass Narrows and Clarence Strait during spring and summer associated with feeding on aggregations of fish, meaning the area may play a role in foraging. Because ADOT&PF's activities could occur during any season, takes may occur during important feeding times. However, the project area represents a small portion of available foraging habitat and impacts on marine mammal feeding for all species, including humpback whales, should be minimal.

Any impacts on marine mammal prey that occur during ADOT&PF's planned activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the reproduction or survival of any individuals, much less the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would, therefore, not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Take by Level A harassment of Pacific white-sided dolphin, killer whale, humpback whale, fin whale, gray whale, or minke whale is not anticipated or authorized;
- ADOT&PF will implement mitigation measures including soft-starts for impact pile driving and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that any take by Level A harassment is, at most, a small degree of PTS;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and will not be of a duration or intensity expected to result in impacts on reproduction or survival;
- There are 10 known areas of specific biological importance, covering a broad area of southeast Alaska, for humpback whales. The project area overlaps a very small portion of one of these BIAs. No other known areas of particular biological importance to any

of the affected species or stocks are impacted by the activity, including ESA-designated critical habitat;

• The project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species and stocks and anticipated habitat impacts are minor; and

• Monitoring reports from similar work in Tongass Narrows have documented little to no effect on individuals of the same species impacted by the specified activities.

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.

The instances of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all stocks (see Table 9). The number of animals that we expect to authorize to be taken from these stocks would be considered small relative to the relevant stocks' abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

The Alaska stock of Dall's porpoise has no official NMFS abundance estimate for this area, as the most recent estimate is greater than 8 years old. The most recent estimate was 13,110 animals for just a portion of the stock's range. Therefore, the 100 takes of this stock proposed for authorization clearly represent small numbers of this stock.

Likewise, the Southeast Alaska stock of harbor porpoise has no official NMFS abundance estimate as the most recent estimate is greater than 8 years old. The most recent estimate was 1,302 animals (Muto *et al.* 2021) and it is highly unlikely this number has drastically declined. Therefore, the 75 authorized takes of this stock proposed for authorization clearly represent small numbers of this stock.

There is no current or historical estimate of the Alaska minke whale stock, but there are known to be over 1,000 minke whales in the Gulf of Alaska (Muto *et al.* 2018), so the 4 takes proposed for authorization is small relative to estimated survey abundance, even if each proposed take occurred to a new individual. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and ADOT&PF's proposed project area would impact a small portion of this range.

The best available abundance estimate for fin whale is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range, but there are known to be over 2,500 fin whales in the northeast Pacific stock (Muto *et al.* 2021). As such, the 2 takes proposed for authorization is small relative to the estimated survey abundance, even if each proposed take occurred to a new individual.

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.

Harbor seals are the marine mammal species most regularly harvested for subsistence by households in Ketchikan and Saxman (a community a few miles south of Ketchikan, on the Tongass Narrows). Eighty harbor seals were harvested by Ketchikan residents in 2007, which ranked fourth among all communities in Alaska that year for harvest of harbor seals. Thirteen harbor seals were harvested by Saxman residents in 2007. In 2008, two Steller sea lions were harvested by Ketchikan-based subsistence hunters, but this is the only record of sea lion harvest by residents of either Ketchikan or Saxman. In 2012, the community of Ketchikan had an estimated subsistence take of 22 harbor seals and 0 Steller sea lion (Wolf *et al.* 2013). NMFS is not aware of more recent data. Hunting usually occurs in October and November (Alaska Department of Fish and Game (ADF&G) 2009), but there are also records of relatively high harvest in May (Wolfe *et al.* 2013). The Alaska Department of Fish and Game (ADF&G) has not recorded harvest of cetaceans from Ketchikan or Saxman (ADF&G 2023).

All project activities would take place within the industrial area of Tongass Narrows immediately adjacent to Ketchikan where subsistence activities do not generally occur. Both harbor seals and the Steller sea lions may be temporarily displaced from the project area. The project would also not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away where these construction activities are not expected to take place. Some minor, short-term harassment of the harbor seals could occur, but given the information above, we would not expect such harassment to have effects on subsistence hunting activities.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from ADOT&PF'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 (AKRO).

On February 6, 2019, NMFS AKRO completed consultation with NMFS OPR for the Tongass Narrows Project and issued a Biological Opinion. Formal consultation was later reinitiated due to changes to ADOT&PF's action that were not considered in the February 2019 opinion (PCTS# AKR–2018–9806/ECO# AKRO–2018–01287). NMFS' AKRO issued a revised Biological Opinion to NMFS OPR on December 19, 2019 which concluded that the take NMFS proposed to authorize through IHAs would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. NMFS AKRO determined that issuance of the 2022 IHA to ADOT&PF for work in Tongass Narrows did not require reinitiation of the December 2019 Biological Opinion.

NMFS OPR is proposing to authorize take of fin whale and Central North Pacific stock of humpback whales, of which a portion belong to the Mexico DPS of humpback whales, which are ESA-listed. The December 19, 2019 Biological Opinion reinitiation clause (2) and (3), state that formal consultation should be reinitiated if ''new information reveals effects of the agency action that may affect ESA-listed species or critical habitat in a manner or to an extent not previously considered'' and ''the agency action is subsequently modified in a manner that causes an effect on the listed species or critical habitat not considered in this biological opinion.'' Given the additional take that NMFS OPR proposes to authorize, as described herein, NMFS has reinitiated consultation internally on the issuance of this proposed IHA under section 101(a)(5)(D) of the MMPA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ADOT&PF for conducting ferry berth construction in Tongass Narrows in Ketchikan, Alaska provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The IHA would be valid for 1 year from the date of issuance. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activities. 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 one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 17, 2023.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 2307014–0168]

RTID 0648–XV193

Request for Information on Equitable Delivery of Climate Services

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration.

ACTION: Request for information.

SUMMARY: The U.S. Department of Commerce (Department), via the National Oceanic and Atmospheric Administration (NOAA), requests additional input from interested parties on how to enhance NOAA's delivery of climate data, information, science, and tools (''climate services'') and ensure that this delivery is equitable and accounting for the needs and priorities of a diverse set of user communities as they engage in climate preparedness, adaptation, and resilience planning. Building on the work that NOAA is already doing to prepare communities for increasing climate impacts, the input from this Request for Information (RFI) will be used to create an Action Plan that will inform more equitable and inclusive design, production, and delivery of climate services for users of all disciplines and backgrounds.

DATES: Responses are due on or before September 21, 2023.

NOAA will host virtual public listening sessions during the months of August and September for participants to provide comments. See **ADDRESSES** below for more information on dates, times, and registration.

ADDRESSES: You may submit comments on this document by any of the following methods:

- *Email Submission:* Interested individuals and organizations should submit written or recorded comments by email to *climate.input@noaa.gov*. If submitting via email, include the title of this RFI, ''Request for Information on Equitable Delivery of Climate Services'' in the subject line of the email.

Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF, or recorded formats only, not to exceed a file size of 25 MB. If comments are submitted via recording, they must be in .mpg, mpeg, or .wav file formats. All comments submitted via email in recorded format will be transcribed.

- *Electronic Submission:* Comments may also be submitted in writing only via *www.regulations.gov/*. Go to *https://www.regulations.gov* and enter the title of this action, ''Request for Information on Equitable Delivery of Climate Services'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments. Enter ''N/A'' in required fields if you wish to remain anonymous.
- *Mail:* Submit written comments to Ella Clarke, Room 58010/HCHB, 1401 Constitution Ave. NW, Washington, DC 20230. Include the title of this RFI, ''Request for Information on Equitable Delivery of Climate Services'' in the written response.
- *Public Listening Sessions:* Provide oral comments during virtual public listening sessions, as described under **DATES**. Registration details and additional information about how to participate in these public listening sessions is available at *https://www.eventbrite.com/cc/equitable-climate-service-delivery-2404789*.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. All comments received are part of the public record and may be posted, without change, on NOAA's website at *https://www.noaa.gov* and on *https://www.regulations.gov*. Commenters should include the name of the person and/or organization filing the comment. All identifying information (*e.g.,* name, email address) submitted voluntarily by the sender will be publicly accessible. NOAA, therefore, requests that no business proprietary information, copyrighted information, or sensitive personally identifiable information be submitted in response to this RFI. Comments will be accepted in English and Spanish. Comments submitted in Spanish will be translated to English for public posting.

FOR FURTHER INFORMATION CONTACT: Ella Clarke, Office of the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, (771) 216–1352; *ella.clarke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Climate change is here. Communities around the country and the world are feeling its impacts every day. Brutal heat waves on land and in the ocean, extreme and prolonged drought, and coastal and inland flooding are just some of the risks that are threatening our economies, ecosystems, and ways of life. Communities of color, Indigenous, Tribal communities, and other marginalized communities—communities already facing systemic economic, social, civic, and environmental inequity—experience disproportionate impacts. Historically, these communities have been without access to resources that would support them in advancing their community priorities, preparing for climate-related disasters, adapting to a changing climate, and avoiding the worst future damages.

NOAA is a leading provider of climate data, information, science, and tools (described as ''climate services'' for the purpose of this document—see Definitions below), and plays a critical role in improving our Nation's ability to adapt and build resilience to climate change. Equity is a core component of NOAA and the Department of Commerce's vision. NOAA has committed to making equity central to every part of its mission, including its climate service delivery, as part of NOAA's Strategic Plan (*https://www.noaa.gov/organization/budget-finance-performance/value-to-society/noaa-fy22-26-strategic-plan*) and Climate Ready Nation initiative. This includes improving discovery of, access to, and usability of climate services to adapt to climate change and prepare for and enhance resilience to its impacts. Following through on that equity commitment requires NOAA to center the needs and priorities of historically underserved communities in its delivery of climate services. NOAA has taken strides to improve how underserved communities benefit from NOAA's climate services through a series of Climate Equity Roundtables and subsequent Climate Equity Pilots (*https://www.noaa.gov/regional-collaboration-network/noaas-climate-and-equity-roundtables*), among other efforts, but we acknowledge that there is more that we can do. NOAA also has opportunities to improve equity in its climate service delivery through increased capacity and improved access to climate services for climate preparedness, adaptation, and resilience planning in underserved and Tribal and Indigenous communities, including consideration and inclusion of Indigenous Knowledge in the design and delivery of NOAA's climate services.

NOAA aims to elicit comments on how to enhance the agency's delivery of climate services and ensure that this delivery is equitable and accounting for the needs and priorities of a diverse set of user communities. Building on the work that NOAA is already doing to prepare communities for increasing climate impacts, we will gather critical feedback from a wide swath of users of all disciplines and backgrounds, including but not limited to those working in public health, housing, economic development, environmental justice, and other communities that we aim to better support (see Target Audience list below). A summary of responses will be shared publicly and will be used to develop an Action Plan to further embed equity in NOAA's climate service design, production, and delivery based on feedback received from respondents.

(1) RFI Objectives

- Solicit feedback on the climate services and other decision support needed to help a range of user communities, particularly historically underserved, Tribal, and Indigenous communities, move forward with their climate preparedness, adaptation, and resilience planning.
- Leverage responses to spark further conversation within NOAA and with community partners to drive organizational change and ensure that NOAA both (1) provides and co-produces climate services that meet the needs and enhance the capabilities of those we serve, and (2) sustains productive feedback loops with users to adaptively manage its climate services for continual improvement and more equitable outcomes.
- Take concrete action to make NOAA's climate services more accessible, understandable, usable, inclusive of the social and economic impacts of climate change, and capable of addressing complex and compounding hazards.
- Take concrete action to build capacity and support users of all disciplines and backgrounds, particularly for historically underserved communities and Tribal and Indigenous communities, by expanding science literacy and successfully applying technical information and data to science-based decisions about climate preparedness, risk, and resilience.

(2) Target Audience

NOAA is particularly interested in hearing from communities that it may

not engage with regularly, including but not limited to:

- Community and city planners
- Community organizers
- Public health workers
- Affordable housing advocates
- Environmental non-profits
- Environmental justice groups
- Small business owners
- Food banks, urban and community gardens
- Students and youth organizers
- Community Development Financial Institutions (CDFIs)
- Tribal and Indigenous government officials and community members
- State and territorial governments
- Local government

II. NOAA Investment in Equitable Climate Service Delivery

The Biden-Harris Administration has laid out clear priorities around climate resilience, adaptation, and equity through Executive Order 13985, which calls for the Federal Government to ''pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality''; and Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad. Other Federal agencies, including the U.S. Department of Housing and Urban Development, the Federal Emergency Management Administration, and the U.S. Environmental Protection Agency, have used these Executive Orders as impetus for releasing RFIs to enhance their incorporation of equity considerations into existing climate preparedness, adaptation, and resilience programs.

(1) Climate Service Delivery for Tribal Nations and Indigenous Peoples

NOAA recognizes the critical contributions of Indigenous Knowledge that Tribal Nations and Indigenous Peoples make to climate preparedness, adaptation, and resilience practices, and the importance of ensuring that NOAA's consideration and inclusion of Indigenous Knowledge is guided by respect for the sovereignty and self-determination of Tribal Nations; the Nation-to-Nation Relationship between the United States and Tribal Nations, and the United States' trust responsibility; and the need for the consent of and honest engagement with Tribal Nations and Indigenous Peoples. NOAA, in response to the Indigenous Knowledge Guidance (*https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf*) provided by the White House Office of Science and Technology Policy and the White House Council on Environmental Quality, has updated its NOAA Tribal Consultation Handbook (*https://www.noaa.gov/legislative-and-intergovernmental-affairs/noaa-tribal-resources-updates*) and reaffirmed NOAA Administrative Order NAO 218–8A: Policy on Government-to-Government Consultation with Federally Recognized Indian Tribal Governments (*https://www.noaa.gov/organization/administration/nao-218-8A-policy-on-G2G-consultation-with-federally-Recognized-Tribal-Governments*). This RFI seeks to further understand Tribal and Indigenous needs around and contributions to NOAA's suite of climate services.

(2) Climate Ready Nation

NOAA launched Climate Ready Nation to better organize and deliver NOAA's climate services and get actionable weather, water, and climate information and data in the hands of decision makers to help them build a thriving, equitable, and resilient future in the face of climate change. But, NOAA and the Federal Government cannot ready the Nation alone. Through the Climate-Ready Nation initiative, the focus is on strengthening a broad range of partnerships with the end goal of creating and sustaining a climate service enterprise that extends far beyond what NOAA alone can do. This includes:

- Serving climate needs within the Department of Commerce;
- Supporting other members of the Federal Government in climate-proofing their investments;
- Tailoring service delivery to state and local leaders, including leaders in communities, with academic institutions and non-governmental organizations (NGOs), and across the U.S. and territories;
- Engaging with Tribal and Indigenous communities and leaders, recognizing the value of traditional knowledge and, simultaneously, that climate change poses particular threats to indigenous populations;
- Working with businesses and the private sector to enable a robust public-private service delivery enterprise; and
- empowering the public to take action in their own lives.

This will be successful only if we take a purposeful approach to our partnerships and ensure that this vast, multi-stakeholder group of climate service providers is using authoritative and fit-for-purpose information to inform climate actions.

(3) NOAA Climate Equity Roundtables and Pilots

The NOAA Regional Collaboration Network is supporting NOAA's commitment to sustained engagement with underserved communities through seven pilot projects in the coming years. Each regional pilot will respond directly to feedback received from partners during Climate and Equity roundtable discussions. Pilots will take a unique, place-based approach to helping vulnerable communities better understand, prepare for, and respond to climate change. You can read more about the Pilots here: *https://www.noaa.gov/noaa-regional-collaboration-network-announces-climate-and-equity-pilot-projects*.

(4) NOAA Grant Programs Under the Bipartisan Infrastructure Law and Inflation Reduction Act

On June 6, 2023, U.S. Secretary of Commerce Gina Raimondo announced historic funding for NOAA under the Inflation Reduction Act (*IRA; https://www.noaa.gov/inflation-reduction-act*), highlighting plans to implement $3.3 billion in investments focused on ensuring America's communities and economy are ready for and resilient to climate change. Through the IRA, and building on investments made under the Bipartisan Infrastructure Act (*BIL; https://www.noaa.gov/infrastructure-law*), NOAA will continue its efforts to build a climate-ready nation. This includes funding that will empower NOAA to address the growing demand for climate services and support for climate preparedness, adaptation, and resilience planning in a way that is accessible and equitable for users of all disciplines and backgrounds. More information on these investments can be found here: *https://www.noaa.gov/inflation-reduction-act*.

III. List of Questions for Commenters

NOAA seeks responses to three categories of questions below in Sections A, B, and C. We invite any member of the public, particularly those in the Target Audience list above, to provide input on some or all of the questions in the below categories:

A. Enhancing Accessibility of NOAA Climate Services
B. Capacity Building, Education, and Technical Assistance
C. Community Outreach, Engagement, and Co-production of Climate Services

Respondents are welcome to respond to as many or as few questions below as are applicable to their experience with NOAA's climate services. Response to

all questions listed below is NOT required. You may also include links to online material or interactive presentations. If including data sets, please make the data available in a downloadable, machine-readable format with accompanying metadata. (See **ADDRESSES** for further instructions.)

A. Enhancing Accessibility of NOAA Climate Services

NOAA is a leading provider of climate data, information, science, and tools, and maintains a rich array of climate services that are designed to inform decisions on climate preparedness, adaptation, and resilience. However, an abundance of scientific resources and gaps in climate services, particularly at smaller scales, can create challenges as communities look to access, understand, and use information that suit their particular needs. In addition, the data, tools, and services that NOAA provides may also not be accessible, understandable, or usable for all communities. The questions below seek to gather feedback on how NOAA is, or is not, addressing the information needs and priorities of communities as they seek to make decisions about their climate preparedness, risk, and resilience. Responses could include (but are not limited to): feedback on discoverability (finding the right data for use), ease of accessing NOAA data, tools, and services; scale of data; usability of data; translation of NOAA data and tools into multiple languages; and/or data gaps related to Indigenous and place-based knowledge, community expertise, and/or social and economic impacts of climate change. NOAA invites comment on the following questions:

Use of Climate Services

1. When and why do you seek information about climate and the environment? What are your priorities when looking for this information, and what do you want to do with the information you are seeking?

2. What data, information, science, and tools (''climate services'') do you use to make decisions about your risk from climate-related natural hazards (*e.g.,* drought, heat waves, wildfires, floods, intense precipitation, extreme weather) and your preparedness, resilience, and adaptation planning and actions?

a. What do you find most useful about the data, tools and information you use? What's missing?

b. Are these resources from NOAA? If not, where are they from?

Access/Accessibility

3. Please tell us, with stories or examples, about your experiences accessing NOAA climate services on climate hazards, risk, and resilience.

4. What obstacles or challenges have you faced in accessing NOAA climate services for decision-making around climate preparedness, adaptation, and resilience in your community?

Understanding

5. Please tell us, with stories or examples, about your experiences understanding NOAA climate services on climate hazards, risk, and resilience.

6. What obstacles or challenges have you faced in understanding NOAA climate services for decision-making around climate preparedness, adaptation, and resilience in your community?

Use/Application

7. Please tell us, with stories or examples, about your experiences applying NOAA climate services to support decision-making around climate preparedness, adaptation, and resilience in your community.

8. What obstacles or challenges have you faced in applying NOAA climate services to decision-making around climate preparedness, adaptation, and resilience in your community?

Barriers/Opportunities for Improvement

9. Does NOAA provide climate resilience science, data, tools, and/or information that is relevant to you and in your preferred language? How has this impacted your climate preparedness and resilience planning?

10. Does NOAA provide climate services that are relevant to your needs and at a scale that is useful in your decision-making around climate preparedness and resilience? Please explain your answer.

11. What climate services (science, data, tools, and/or information) would you like to have about the socioeconomic impacts of climate, such as on housing, the economy, food security, workforce, migration, *etc.*? Please explain your answer.

a. What would you like to be able to do with these data, tools, and/or information?

b. How can socioeconomic impacts of climate change be better integrated into the climate services NOAA provides?

B. Capacity Building, Education, and Technical Assistance

NOAA recognizes that many communities, particularly underserved communities and Tribal and Indigenous communities, may not have equitable access to NOAA climate services, nor to NOAA staff, scientists, and project development processes to help ensure their voices, needs, and priorities are heard. There is an opportunity for NOAA to make its climate services easier for users of all disciplines and backgrounds to apply. NOAA wants to hear more about what we can do to help communities increase their capacity to understand and apply NOAA climate services to assess their climate risk and develop resilience and adaptation strategies to prepare for the impacts of climate change. This could include feedback on gaps in NOAA training and workforce development for climate preparedness, resilience, and adaptation, supporting users of all disciplines and backgrounds across sectors, scales, and hazards, or leveraging existing delivery mechanisms or technical assistance programs to reach users more broadly. NOAA invites comment on the following questions:

1. Do you have capacity in your organization or community to use NOAA climate data, information, science, and tools (''climate services'') in preparedness, adaptation, and resilience planning? Please explain your answer—what additional capacity or resources would be helpful and why?

2. How could NOAA climate services be improved to support your organization or community in adapting to climate change?

3. What are the training and workforce development needs that NOAA could better address through our climate services?

4. What are the specific ways in which NOAA can support communities in assessing their climate risk, preparing for the range of hazards they face, and building long-term resilience—particularly through capacity building and technical assistance?

5. How can NOAA climate services be better used to advance climate and environmental justice and prioritize underserved communities?

C. Community Outreach, Engagement, and Co-Production of Climate Services

Fully understanding the needs, priorities, capacity, and capabilities of the communities we serve, and where additional capacity, training, and education gaps may exist requires a meaningful and continued commitment to outreach, engagement, and relationship building with communities. This could include better leveraging NOAA and other agency ''extension'' programs and other public/private partnerships; better understanding what users want/need to know about climate change; or co-producing climate

services and guidance on how to use them based on user experience and needs. NOAA invites comment on the following questions:

1. Has NOAA directly engaged with your community to gather feedback, jointly design or produce climate data, information, science, or tools (''climate services'')? Please provide a brief description.

a. If so, was it effective and in what ways? If not, how could it be improved to better build a strong trust relationship with your community?

2. Is NOAA effectively using community feedback and relationships to co-design and disseminate climate services? How can NOAA improve meaningful community engagement that leads to design and dissemination of climate services that communities need?

3. Are there partnerships that have enhanced your access to or understanding of climate change and/or potential preparedness, adaptation, and resilience solutions? Are there partnerships NOAA should invest in to enhance and sustain community access and understanding? Please explain your answer.

4. How can NOAA more meaningfully integrate your organization or community, including individuals with lived expertise, in the co-production of climate services?

5. How can Indigenous Knowledge, local, place-based knowledge, and other ways of knowing be included meaningfully into the climate services that NOAA provides, particularly for climate preparedness, adaptation, and resilience?

IV. Definitions

There are several terms used throughout this RFI that NOAA will define here to ensure clarity and ease of response to the questions.

- *Adaptation:* The process of adjusting to new (climate) conditions in order to reduce risks to valued assets (*https://toolkit.climate.gov/content/glossary*).
- *Capacity Building:* The process of developing and strengthening the skills, instincts, abilities, processes and resources that organizations and communities need to survive, adapt, and thrive in a fast-changing world (*https://www.un.org/en/academic-impact/capacity-building*).
- *Climate Services:* ''Scientifically-based, usable information and products that enhance knowledge and understanding about the impacts of climate change on potential decisions and actions.'' This may involve services that are available for consistent use as well as more ongoing, deliberative services shaped by engagement, knowledge co-production, and capacity-building. In addition, Indigenous, traditional and local knowledge are important components for developing climate services in some contexts or for specific cultures and communities (*https://www.whitehouse.gov/wp-content/uploads/2023/03/FTAC_Report_03222023_508.pdf*). In the context of this RFI, ''climate services'' refer to NOAA climate data, information, science, and tools, as well as decision-support, designed to address climate-related hazards, such as heat, drought, sea level rise and coastal inundation, inland flooding, and wildfire. An example of a climate service that NOAA provides to the general public is *Climate.gov* (*https://www.climate.gov*), which includes a host of maps, data sets, educational materials on climate change, and the U.S. Climate Resilience Toolkit. The Climate Resilience Toolkit is designed to help communities meet the challenges of a changing climate, learn about potential climate hazards, and understand how to protect and prepare for climate hazards.
- *Co-production:* The process is generically described as one that ''brings together diverse groups to iteratively create new knowledge and practices,'' whether to generate actionable knowledge or spur the redistribution of power and societal transformation'' (*https://onlinelibrary.wiley.com/doi/10.1029/2022CSJ000021*). Co-production is a methodology that leverages the expertise of practitioners and community members to develop holistic solutions to multifaceted problems at the intersection of society and the environment. By fostering collaboration and integrating diverse perspectives, co-production enables a deeper understanding of causes and potential remedies of environmental stressors (*https://www.nationalacademies.org/our-work/co-production-of-environmental-knowledge-methods-and-approaches*). For more information and examples of co-production in a NOAA context, see the following: *https://repository.library.noaa.gov/view/noaa/45596/noaa_45596_DS1.pdf.*
- *Equity:* The consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/*).
- *Indigenous Knowledge:* A body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment (*https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf*).
- *Resilience:* The capacity of a community, business, or natural environment to prevent, withstand, respond to, and recover from a disruption (*https://toolkit.climate.gov/content/glossary*).
- *Service Delivery:* The continuous process of engaging with users in order to provide relevant and timely information via appropriate mechanisms (*https://www.noaa.gov/sites/default/files/2022-02/A-Model-of-Service-Delivery-for-the-NOAA-Water-Initiative_FINAL.pdf*).
- *Technical Assistance:* Targeted coaching for users to help them access, understand, and use NOAA products and services for their own decisions (*https://www.noaa.gov/sites/default/files/2022-02/A-Model-of-Service-Delivery-for-the-NOAA-Water-Initiative_FINAL.pdf*).
- *Underserved Communities:* Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity'' (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/*).
- *User(s):* A person(s), group, or organization who accesses and applies information, products, or services (*https://www.noaa.gov/sites/default/files/2022-02/A-Model-of-Service-Delivery-for-the-NOAA-Water-Initiative_FINAL.pdf*).

V. Other

Please note that this is an RFI only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions

submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a request for proposals, applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Choosing not to respond to this RFI does not preclude participation in any future procurement, if conducted.

Dated: July 17, 2023.

Jainey Kumar Bavishi,

Assistant Secretary for Oceans and Atmosphere and Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–15432 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Oregon Coastal Management Program; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a virtual public meeting to solicit input on the performance evaluation of the Oregon Coastal Management Program. NOAA also invites the public to submit written comments.

DATES: NOAA will hold a virtual public meeting on Monday, September 11, 2023, at 6 p.m. Pacific Daylight Time (PDT). NOAA may close the meeting 15 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants. NOAA will consider all relevant written comments received by Friday, September 22, 2023.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Virtual Public Meeting:* Provide oral comments during the virtual public meeting on Monday, September 11, 2023, at 6 p.m. PDT by registering as a speaker at *https://forms.gle/aaupTYai4MiUSGqW6.* Please register by Monday, September 11, 2023, at 5 p.m. PDT. Upon registration, NOAA will send a confirmation email. The lineup of speakers will be based on the date and time of registration. One hour prior to the start of the virtual meeting on September 11, 2023, NOAA will send an email to all registered speakers with a link to the public meeting and information about participating.
- *Email:* Send written comments to Becky Allee, Evaluator, NOAA Office for Coastal Management, at *Becky.Allee@noaa.gov.* Include ''Comments on Performance Evaluation of the Oregon Coastal Management Program'' in the subject line of the message.

NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the performance evaluation of the Oregon Coastal Management Program or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Becky Allee, Evaluator, NOAA Office for Coastal Management, by email at *Becky.Allee@noaa.gov* or by phone at (601) 564–8891. Copies of the previous evaluation findings and assessment and strategies may be viewed and downloaded at *https://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Becky Allee.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of Federally approved coastal management programs. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Oregon has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Authority: 16 U.S.C. 1458.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–15418 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD159]

Research Track Assessment for Atlantic Cod

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing the Atlantic cod stocks western Gulf of Maine, eastern Gulf of Maine, southern New England, Georges Bank. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of independent stock assessment experts. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from July 31, 2023–August 3, 2023. The meeting will conclude on August 3, 2023, at 4:30 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx *https://noaanmfs-*

meets.webex.com/noaanmfs-meets/j.php?MTID=m35f7a63c1ebaa546af3e814f1a269e1d.

Meeting number (access code): 2762 857 0886.

Meeting password: PAvVKXGV333.

Phone: +1–415–527–5035 U.S. Toll.

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–495–2195; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/event/atlantic-cod-2023-research-track-peer-review.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Time	Topic	Presenter(s)	Notes
Monday, July 31, 2023			
12:00 p.m.–12:15 p.m	Welcome/Logistics Introductions/ Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead Russ Brown, PopDy Branch Chief JJ Maguire, Panel Chair.	
12:15 p.m.–12:45 p.m	Introduction and Overview	Lisa Kerr (WG Chair).	
12:45 p.m.–1:45 p.m	Term of Reference (TOR) #9	Lisa Kerr/Rich McBride.	
1:45 p.m.–2:45 p.m	TOR #1	Scott Large/Jamie Behan	Ecosystems.
2:45 p.m.–3:00 p.m	Break.		
3:00 p.m.–4:30 p.m	TOR #2	Charles Perretti/Kathy Sosebee	Catch.
	Discussion/Summary	Review Panel.	
	Public Comment	Public.	
5:15 p.m	Adjourn.		
Tuesday, August 1, 2023			
12:00 p.m.–12:05 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead JJ Maguire, Panel Chair.	
12:05 p.m.–1:45 p.m	TOR #3	Lisa Kerr	Survey Data.
1:45 p.m.–2:45 p.m	TORs #4–6 and #8	Charles Perretti	WGOM—Models, BRPs, Projections, and Alternative Assessment Plan.
2:45 p.m.–3:00 p.m	Break.		
3:00 p.m.–4:00 p.m	TORs #4–6 and #8 cont	Charles Perretti	WGOM—Models, BRPs, Projections, and Alternative Assessment Plan.
4:00 p.m.–4:30 p.m	Discussion/Summary	Review Panel.	
4:30 p.m.–4:45 p.m	Public Comment	Public.	
4:45 p.m	Adjourn.		
Wednesday, August 2, 2023			
12:00 p.m.–12:05 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead JJ Maguire, Panel Chair.	
12:05 p.m.–2:00 p.m	TORs #4–6 and #8	Amanda Hart	GB—Models, BRPs, Projections, and Alternative Assessment Plan.
2:00 p.m.–2:15 p.m	Break.		
2:15 p.m.–4:15 p.m	TORs #4–6 and #8	Alex Hansell and Steve Cadrin	SNE—Models, BRPs, Projections, and Alternative Assessment Plan.
4:15 p.m.–4:45 p.m	Discussion/Summary	Review Panel.	
4:45 p.m.–5:00 p.m	Public Comment	Public.	
5:00 p.m	Adjourn.		
Thursday, August 3, 2023			
12:00 p.m.–12:05 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead JJ Maguire, Panel Chair.	
12:05 p.m.–2:00 p.m	TORs #4–6 and #8	Micah Dean	EGOM—Models, BRPs, Projections, and Alternative Assessment Plan.
2:00 p.m.–2:15 p.m	Break.		
2:15 p.m.–3:15 p.m.	TOR #7	Lisa Kerr	Research Recommendations.
3:15 p.m.–4:15 p.m	Panel Wrap-up and Discussion/Summary.	Review Panel.	
4:15 p.m.–4:30 p.m	Public Comment	Public.	
4:30 p.m	Adjourn.		

The meeting is open to the public; however, during the 'Report Writing' session the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Alexander Dunn, via email *alexander.dunn@NOAA.gov.*

Dated: July 14, 2023.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–15364 Filed 7–19–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Navy

Notice of Intent To Prepare an Update to the 2018 Integrated Natural Resources Management Plan and Public Report for the Barry M. Goldwater Range

AGENCY: United States Air Force, United States Marine Corps, Department of Defense.

ACTION: Notice of intent, request for input.

SUMMARY: The U.S. Air Force (USAF), in consultation with the United States Marine Corps (USMC), is issuing this notice of intent (NOI) to conduct a five-year review and update of the Integrated Natural Resources Management Plan (INRMP) for the Barry M. Goldwater Range (BMGR), AZ.

DATES: Meetings were held in Tucson, AZ and Ajo, AZ on 11 January 2023 and 10 May 2023, respectively. A third meeting will be held in Yuma, AZ. The Yuma public meeting will be held as an open house format, with presentation boards and project team members available to answer questions. Upcoming meeting details are as follows:

Thursday, 24 August, 2023. 5:30–7:30 p.m. Yuma County Library District, Main Library, 2951 S 21st Drive, Yuma, AZ 85364

ADDRESSES: Comments related to the Draft BMGR Public Report and BMGR INRMP update may be submitted to: Ms. Jennie Anderson, Center for Environmental Management of Military Lands, (970) 491–5640, Colorado State University, 1490 Campus Delivery, Fort Collins, CO 80523–1490, *cemml_INRMPcomments@colostate.edu.*

SUPPLEMENTARY INFORMATION: This NOI (40 CFR 1508.22) is to conduct a five-year review and update of the INRMP for the BMGR and prepare a Public Report pursuant to section 3031(b)(5)(B) of the Military Lands Withdrawal Act [MLWA of 1999 (Pub. L. 106–65, Title XXX)]. The public meeting will familiarize the public with the progress made in the management of natural resources and share information about projects planned to support natural resource management during the next five years and facilitate public involvement with the existing Public Report and INRMP for the BMGR.

The Sikes Act (16 U.S.C. 670a) provides that established INRMPs must be reviewed as to their operation and effect not less than every five years. The existing BMGR INRMP will be updated in accordance with the Sikes Act provision in coordination with the Director of the U.S. Fish and Wildlife Service and the Director of the Arizona Game and Fish Department. The USAF and USMC will develop a Public Report summarizing changes in military use of the BMGR since 2018, as well as summarizing management initiatives involving resources found on these lands will be prepared in accordance with the MLWA of 1999.

FOR FURTHER INFORMATION CONTACT: Questions related to the Draft BMGR Public Report and BMGR INRMP update may be submitted to: Ms. Jennie Anderson, Center for Environmental Management of Military Lands, (970) 491–5640, Colorado State University, 1490 Campus Delivery, Fort Collins, CO 80523–1490, *cemml_INRMPcomments@colostate.edu.*

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–15420 Filed 7–19–23; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Office of the Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force, Board of Visitors of the Air Force Academy.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors (BoV) of the U.S. AirForce Academy (USAFA) will take place.

DATES: Open to the public Thursday, August 24, 2023 from approximately 8 a.m. to 5 p.m. (Mountain Time).

ADDRESSES: The meeting will occur at the United States Air Force Academy, Colorado Springs, Colorado, as well as virtually. Members of the public will only be allowed to attend the meeting virtually. The link for the virtual meeting can be found at: *https://www.usafa.edu/about/bov/* and will be active approximately thirty minutes before the start of the meeting.

FOR FURTHER INFORMATION CONTACT: *Designated Federal Officer:* Mr. Anthony R. McDonald, *bov@afacademy.af.edu,* (703) 614–4751, 1660 Air Force Pentagon, Washington DC 20330–1660.

Alternate Designated Federal Officer: Mr. James M. Wilmer, *bov@afacademy.af.edu,* (719) 333–0472, 2304 Cadet Drive, Suite 3200, USAF Academy, CO 80840–5025.

USAFA BoV Website: https://www.usafa.edu/about/bov/. Contains information on the Board of Visitors, link to the virtual meeting, and approved meeting agenda.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. 1001 *et seq.*), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In accordance with 10 U.S.C. 9455(e)(1), the Board shall inquire into the morale, discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

Written Statements: Any member of the public wishing to provide input to the Board of Visitors of the U.S. Air Force Academy should submit a written statement in accordance with 41 CFR 102–3.105(j) and § 102–3.140 and § 1009(a)(3) of the FACA. The public or interested organizations may submit written comments or statements to the BoV about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the Alternate Designated Federal Officer via electronic mail, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat and/or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five (5) business days prior to the meeting so they may be made available to the BoV Chairman for consideration prior to the meeting. Written comments or statements received after August 16, 2023, may not be provided to the BoV

until its next meeting. Please note that because the BoV operates under the provisions of the FACA, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–15438 Filed 7–19–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research and Special Education Research Grant Programs

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the Education Research and Special Education Research Grant Programs, Assistance Listing Numbers (ALNs) 84.305A, 84.324A, 84.324B, and 84.324C. This notice relates to the approved information collection under OMB control number 4040–0001.

DATES: The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the Requests for Applications (RFAs) that are posted at the following website: *https://ies.ed.gov/funding.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice, as well as in the relevant RFA and application package.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: In awarding the research grants, the Institute of Education Sciences (IES) intends to provide national leadership in expanding knowledge and understanding of (1) developmental and school readiness outcomes for infants and toddlers with or at risk for a disability, (2) education outcomes for all learners from early childhood education through postsecondary and adult education, and (3) employment and wage outcomes when relevant (such as for those engaged in career and technical, postsecondary, or adult education). The IES research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners. These interested individuals include parents, educators, learners, researchers, and policymakers. In carrying out its grant programs, IES provides support for programs of research in areas of demonstrated national need. In awarding research training grant programs, IES aims to prepare individuals to conduct rigorous and relevant education and special education research that advances knowledge within the field and addresses issues important to education policymakers and practitioners.

Competitions in This Notice: IES is announcing four research competitions through two of its centers:

The IES National Center for Education Research (NCER) is announcing one competition in the following area: education research.

The IES National Center for Special Education Research (NCSER) is announcing three competitions—one competition in each of the following areas: special education research, special education research training, and special education research and development center.

NCER Competition

The Education Research Competition (ALN 84.305A). Under this competition, NCER will consider only applications that address one of the following topics:

- Career and Technical Education.
- Civics Education and Social Studies.
- Cognition and Student Learning.
- Early Learning Programs and Policies.
- Improving Education Systems.
- Literacy.
- Policies, Practices, and Programs to Support English Learners.
- Postsecondary and Adult Education.
- Science, Technology, Engineering, and Mathematics (STEM) Education.
- Social, Emotional, and Behavioral Context for Teaching and Learning.
- Teaching, Teachers, and the Education Workforce.

NCSER Competitions

The Special Education Research Competition (ALN 84.324A). Under this competition, NCSER encourages a broad range of research, including studies that may have more than one research focus (such as reading and behavior) and may focus broadly on students with disabilities or on a particular disability (such as autism spectrum disorders). The range of research supported through this program includes, but is not limited to, programs to improve child development and school readiness; academic and/or behavioral interventions; instructional practices and/or professional development programs for teachers and other school-based personnel; strategies for improving the family support and engagement critical to the success of students with disabilities; policies and systems-level interventions and programs to address school finance, school-community collaborations, or school structures that affect educational progress for students with disabilities; transition from secondary school to postsecondary education, career, and/or independent living; as well as access to, persistence in, and completion of postsecondary education.

The Research Training Programs in Special Education Competition (ALN 84.324B). Under this competition, NCSER will consider only applications that address Early Career Development and Mentoring.

Special Education Research and Development Center (R&D Center) (ALN 84.324C). Under this competition, NCSER will consider applications that address Research and Development Center on the K–12 Special Education Teacher Workforce.

Exemption From Proposed Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Program Authority: 20 U.S.C. 9501 *et seq.*

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, and 75.250(a). (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to these competitions.

II. Award Information

Types of Awards: Discretionary grants and cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for FY 2024, IES is inviting applications for these competitions now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. IES intends to announce additional competitions later in 2023.

Estimated Range of Awards: See chart at the end of this notice. The size of the awards will depend on the scope of the projects proposed.

Estimated Number of Awards: The number of awards made under each competition will depend on the quality of the applications received for that competition and the availability of funds.

For the Special Education Research and Development Center competition (ALN 84.324C), we intend to fund up to one grant for the Special Education Teacher Workforce Center.

For the Special Education Research Competition (ALN 84.324A), contingent on the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of highly rated unfunded applications submitted in response to the FY 2023 competition announcement.

Note: The Department is not bound by any estimates in this notice.

Project Period: See chart at the end of this notice.

III. Eligibility Information

1. *Eligible Applicants:* For the Early Career Development and Mentoring Program under the Research Training Programs in Special Education (ALN 84.324B), applicants must be an institution of higher education in the United States and its territories.

For all other competitions in this notice, applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions of higher education, such as colleges and universities.

2. a. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

b. *Indirect Cost Rate Information:* These programs use an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Other Information:* Information regarding program and application requirements for the competitions is in the currently available IES Application Submission Guide and in the NCER and NCSER RFAs, which are available on the IES website at: *https://ies.ed.gov/funding/.* The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Dates and Times:* The deadline date for transmittal of applications for each competition is indicated in the chart at the end of this notice and in the RFAs for the competitions.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at *https://ies.ed.gov/director/sro/peer_review/application_review.asp.*

For the 84.305A and 84.324A competitions, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the qualifications and experience of the personnel, the resources of the applicant to support the proposed activities, and the quality of the dissemination history and dissemination plan. These criteria will be described in greater detail in the RFAs.

For the 84.324B competition, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the quality of the career development plan, the qualifications and experience of the personnel, the resources of the applicant to support the proposed activities, and

the quality of the dissemination plan. These criteria are described in greater detail in the RFA.

For the 84.324C competition, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the quality of the national leadership plan, the qualifications and experience of the personnel, and the resources of the applicant to support the proposed activities. These criteria are described in greater detail in the RFA.

For all IES competitions, applications must include budgets no higher than the relevant maximum award as set out in the relevant RFA. IES will not make an award exceeding the maximum award amount as set out in the relevant RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, IES may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, IES also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under these competitions, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under these competitions to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual meeting of up to three days for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by IES. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by IES under 34 CFR 75.118. IES may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* To evaluate the overall success of its education research and special education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes. In addition, NCSER annually assesses the number of newly developed or modified interventions with evidence of promise for improving learner education outcomes. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing, math, and science, as well as outcomes that reflect students' successful progression through the education system, such as course and grade

completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Employment and earnings outcomes include hours of employment, job stability, and wages and benefits, and may be measured in addition to student academic outcomes. Additional education outcomes for students with or at risk of a disability (as defined in the relevant RFA) include developmental outcomes for infants and toddlers (birth to age three) pertaining to cognitive, communicative, linguistic, social, emotional, adaptive, functional, or physical development; and developmental and functional outcomes that improve education outcomes, transition to employment, independent living, and postsecondary education; and employment and earning outcomes for students with disabilities.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, IES considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether a grantee is in compliance with the IES policy regarding public access to research; and if IES has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, IES also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the relevant program contact person listed in the chart at the end of this notice, as well as in the relevant RFA and application package, individuals with disabilities can obtain this document and a copy of the RFA in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

ALN and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
National Center for Education Research (NCER)					
84.305A Education Research	July 20, 2023	September 21, 2023	$300,000 to $800,000.	Up to 5 years	Lara Faust, *Lara.Faust@ed.gov,* (202) 245–6532.
▪ Career and Technical Education ▪ Civics Education and Social Studies ▪ Cognition and Student Learning ▪ Early Learning Programs and Policies ▪ Improving Education Systems ▪ Literacy ▪ Policies, Practices, and Programs to Support English Learners ▪ Postsecondary and Adult Education ▪ Science, Technology, Engineering, and Mathematics (STEM) Education ▪ Social, Emotional, and Behavioral Context for Teaching and Learning ▪ Teaching, Teachers, and the Education Workforce					
National Center for Special Education Research (NCSER)					
84.324A Special Education Research	July 20, 2023	September 21, 2023	$200,000 to $760,000.	Up to 5 years	Emily Weaver, *Emily.Weaver@ed.gov,* (202) 987–0072.
84.324B Research Training Programs in Special Education.	July 20, 2023	September 21, 2023	$100,000 to $200,000.	Up to 4 years	Katherine Taylor, *Katherine.Taylor@ed.gov*, (202) 987–0071.
▪ Early Career Development and Mentoring					
84.324C Special Education Research and Development Center.	September 21, 2023.	January 11, 2024	$500,000 to $1,000,000.	Up to 5 years	Katherine Taylor, *Katherine.Taylor@ed.gov*, (202) 987–0071.
▪ Research and Development Center on the K–12 Special Education Teacher Workforce					

* These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

Note: If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

[FR Doc. 2023–15379 Filed 7–19–23; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0087]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Department of Education Green Ribbon Schools Nominee Presentation Form

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 21, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrea Falken, 202–987–0855.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: U.S. Department of Education Green Ribbon Schools Nominee Presentation Form.

OMB Control Number: 1860–0509.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 90.

Total Estimated Number of Annual Burden Hours: 22.

Abstract: Begun in 2011–2012, U.S. Department of Education Green Ribbon Schools (ED–GRS) is a recognition award that honors schools, districts, and postsecondary institutions that are making great strides in three Pillars: 1) reducing environmental impact and costs, including waste, water, energy use, and transportation; 2) improving the health and wellness of students and staff, including environmental health of premises, nutrition, and fitness; and 3) providing effective sustainability education, including STEM, civic skills, and green career pathways.

The award is a tool to encourage state education agencies, stakeholders and higher education officials to consider matters of facilities, health and environment comprehensively and in coordination with state health, environment and energy counterparts. In order to be selected for federal recognition, schools, districts and postsecondary institutions must be high achieving in all three of the above Pillars, not just one area. Schools, districts, colleges and universities apply to their state education authorities. State authorities can submit up to six nominees to ED, documenting achievement in all three Pillars. This information is used at the Department to select the awardees.

ED collects information on nominees from state nominating authorities regarding their schools, districts, and postsecondary nominees. State agencies are provided sample applications for all three types of nominees for their use and adaptation. Most states adapt the sample to their state competition. There is no one federal application for the award, but rather various applications determined by states. They do use a required two-page Nominee Submission Form as a cover sheet, which ED provides. This document, in school, district, and postsecondary submission formats is attached. The burden varies greatly from state authority to authority and how they chose to approach the award. The recognition award is part of a U.S. Department of Education (ED) effort to identify and communicate practices that result in improved student engagement, academic achievement, graduation rates, and workforce preparedness, and reinforce federal efforts to increase energy independence and economic security.

Encouraging resource efficient schools, districts, and IHEs allows administrators to dedicate more resources to instruction rather than operational costs. Healthy schools and wellness practices ensure that all students learn in an environment conducive to achieving their full potential, free of the health disparities that can aggravate achievement gaps. Sustainability education helps students engage in hands-on learning, hone critical thinking skills, learn many disciplines and develop a solid foundation in STEM subjects. It motivates postsecondary students in many disciplines, and especially those underserved in STEM subjects, to persist and graduate with sought after degrees and robust civic skills.

So that the Administration can receive states' nominations, ED seeks to provide the Nominee Presentation Form to states—essentially a cover sheet for states' evaluation of their nominees to ED—in three versions; one for school nominees, another for district nominees, and a third form for postsecondary nominees.

Dated: July 17, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–15434 Filed 7–19–23; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Finding of No Significant Impact for the Commercial Disposal of Contaminated Process Equipment From the Savannah River Site

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) has completed the *Final Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment* (Final EA). Consistent with the Final EA, the Proposed Action is the disposal

of contaminated process equipment from the Savannah River Site (SRS) at a commercial low-level radioactive waste (LLW) disposal facility located outside of South Carolina and licensed by a U.S. Nuclear Regulatory Commission (NRC) Agreement State. Based on the information and analysis in the Final EA, DOE intends to implement the Proposed Action and send the contaminated process equipment to the Waste Control Specialists LLC (WCS) Federal Waste Facility (FWF), a licensed commercial disposal facility located in Andrews County, Texas, for disposal.

ADDRESSES: This Finding of No Significant Impact and the Final EA are available on the DOE National Environmental Policy Act (NEPA) website at: *https://www.energy.gov/nepa/doeea-2154-commercial-disposal-savannah-river-site-contaminated-process-equipment.*

FOR FURTHER INFORMATION CONTACT: Edgard Espinosa, U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585. Email: *Edgard.Espinosa@hq.doe.gov.* Telephone: (202) 586–5382.

SUPPLEMENTARY INFORMATION:

I. Background

DOE prepared the Final EA in accordance with Council on Environmental Quality (CEQ) regulations at Title 40 Code of Federal Regulations (CFR) parts 1500–1508 and DOE NEPA implementing procedures at 10 CFR part 1021. Consistent with the Final EA, the Proposed Action is the disposal of contaminated process equipment from SRS at a commercial LLW disposal facility located outside of South Carolina and licensed by an NRC Agreement State; disposal under the Proposed Action would be in accordance with the Agreement State's regulations, which are equivalent to the NRC regulations at 10 CFR part 61 for land disposal of radioactive waste, and other requirements. Disposal alternatives for this waste are discussed under the ''Proposed Action and Alternatives'' section.

Certain SRS process equipment (*i.e.,* Tank 28F salt sampling drill string, glass bubblers, and glass pumps) is contaminated with reprocessing waste and is currently conservatively managed as if it were high-level radioactive waste (HLW), which is required to be disposed of in a geologic repository. Because the NRC has not licensed a geologic repository in the United States, there is no current disposal pathway for the SRS contaminated process equipment. Portions of the Tank 28F salt sampling drill string, glass bubblers, and glass pumps contain hazardous components (*e.g.,* lead) or are contaminated with hazardous constituents. Because there are no permitted facilities at SRS for the disposal of mixed low-level radioactive waste, this contaminated process equipment cannot be disposed of on site. Therefore, the purpose and need for DOE's action is to identify a disposal pathway for the SRS contaminated process equipment to mitigate on-site storage constraints, improve worker safety, and support accelerated completion of the environmental cleanup mission at SRS.

As described in the June 10, 2019, *Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste* (84 FR 26835) (Supplemental Notice) and affirmed in the December 21, 2021, *Assessment of the Department of Energy's Interpretation of the Definition of High-Level Radioactive Waste* (86 FR 72220), DOE interprets the statutory term, ''high-level radioactive waste,'' as set forth in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and the Nuclear Waste Policy Act (NWPA) (42 U.S.C. 10101 *et seq.*) such that some reprocessing wastes may be classified as not HLW (non-HLW) and may be disposed of in accordance with their radiological characteristics and not solely the origin of the waste (HLW interpretation). This interpretation may be used to facilitate the safe disposal of defense reprocessing waste if the waste meets either of the following two criteria:

1. Does not exceed concentration limits for Class C low-level radioactive waste as set out in 10 CFR 61.55, and meets the performance objectives of a disposal facility; or
2. Does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable requirements.

NRC's performance objectives for commercial LLW disposal facilities are specified in 10 CFR part 61, subpart C, ''Performance Objectives.''

As stated in the Supplemental Notice, DOE will continue its current practice of managing all of its defense reprocessing wastes as if they were HLW unless and until a specific waste is determined to be another category of waste based on a detailed technical assessment of its characteristics and an evaluation of potential disposal pathways.

As discussed in the Final EA, DOE has estimated the expected radionuclide concentration levels for each of the disposal containers for the Tank 28F drill string, the glass pumps, and the glass bubblers (see Final EA, Appendix A) and prepared a technical evaluation demonstrating that the contaminated process equipment would meet Criterion 1 for non-HLW under DOE's interpretation of the AEA and NWPA definition of HLW. Consistent with that technical evaluation, DOE also prepared an official determination documenting that the contaminated process equipment is non-HLW under Criterion 1 of the HLW interpretation. As part of implementing this determination, DOE would verify with the licensee of the off-site commercial disposal facility that the disposal containers meet the facility's waste acceptance criteria and all other requirements of the disposal facility, including applicable regulatory requirements prior to disposal and applicable U.S. Department of Transportation (USDOT) requirements for packaging and transportation from SRS to the commercial disposal facility.

On January 19, 2021, DOE issued a notice in the **Federal Register** (86 FR 5175) of its intent to prepare an *Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment.* On December 21, 2021, DOE announced in the **Federal Register** (86 FR 72217) the availability of the *Draft Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment* (Draft EA) for public comment. DOE also posted the Draft EA on DOE websites for public review. DOE held an informational webinar on the Draft EA on January 11, 2022, to provide the public and stakeholders with an overview of the Draft EA and the Department's HLW interpretation.

II. Proposed Action and Alternatives

Under the Proposed Action, DOE would dispose of the SRS contaminated process equipment (Tank 28F salt sampling drill string, glass bubblers, and glass pumps) at a commercial LLW disposal facility outside of South Carolina licensed by an NRC Agreement State. Disposal under the Proposed Action would be in accordance with the Agreement State's regulations, which are equivalent to 10 CFR part 61, among other requirements. Prior to disposal, DOE would submit a waste profile and supporting characterization documentation for the SRS contaminated process equipment to the licensee of the off-site commercial LLW disposal facility to further verify with

the licensee that the final grouted waste meets Criterion 1 of the HLW interpretation for disposal as non-HLW, in accordance with DOE Manual 435.1–1, Radioactive Waste Management Manual. DOE would demonstrate compliance with the waste acceptance criteria and all other requirements of the disposal facility, including any applicable regulatory requirements for management of the waste prior to disposal and applicable USDOT and NRC requirements for packaging and transportation from SRS to the commercial disposal facility. DOE has identified two reasonable action alternatives for the Proposed Action:

• *Alternative 1*—If determined to be Class B or Class C LLW, DOE would stabilize and package the waste at SRS and ship the waste packages to the WCS FWF in Andrews County, Texas, for disposal. Implementation would be dependent upon the waste meeting WCS's waste acceptance criteria, among other requirements.

• *Alternative 2*—If determined to be Class A LLW, DOE would stabilize and package the waste at SRS and ship the waste packages to either Energy*Solutions* in Clive, Utah, or WCS in Andrews County, Texas, for disposal. Implementation would be dependent upon the waste meeting the facility's waste acceptance criteria, among other requirements.

The EA also evaluates a No-Action Alternative under which the contaminated process equipment would remain in storage at SRS until another disposal path was identified.

III. Potential Environmental Impacts

The analyses in the Final EA demonstrate that the Proposed Action and alternatives entail minimal risk to human health or to the quality of the environment for both action alternatives analyzed. The proposed alternatives would have minor potential environmental impacts. Chapter 3 of the Final EA analyzed the following resource areas in detail: (1) air quality, (2) human health (normal operations), (3) human health (accidents and intentional destructive acts), (4) waste management, and (5) transportation.

Air quality impacts would be negligible under both action alternatives. DOE would use typical radiological containment measures during the waste preparation activities. The combination of these measures and a solid waste form would limit the potential to emit airborne radiological materials. Because the transportation containers and any shielding materials would be returned to SRS as a non-radiological shipment, DOE analyzed non-radiological air quality impacts associated with 62 total vehicle shipments (31 radiological and 31 non-radiological return shipments). The estimated number of truck shipments would produce negligible air emissions, including greenhouse gases, and disposal actions at the commercial facilities would not cause any additional air emissions beyond those already expected from their ongoing, permitted, and/or licensed operations.

Potential impacts to workers at SRS and the public from normal operations would be minimal under both action alternatives. Potential doses to workers would be well within the administrative control level for SRS workers and would result in zero latent cancer fatalities (LCFs). In addition, DOE would implement measures (*e.g.,* use of shielding and personal protective equipment) to minimize worker exposures and maintain doses as low as reasonably achievable. Because there would be no radiological emissions or effluents associated with either of the alternatives, and no direct radiation dose off site, there would be no dose to the public from normal operations. Potential impacts from disposal actions at the commercial disposal facility would not result in any notable increase in human health impacts beyond those already expected from ongoing LLW disposal operations under the disposal facility's environmental permits and license.

An accident or intentional destructive act involving the contaminated process equipment during on-site activities would result in minimal impacts to workers and the public. Because the contaminated process equipment would be placed in a disposal container and encased in grout and foam to fill any void spaces, there would be no dispersion of radiological materials that could occur from a drop during any lifting operations. The maximum reasonably foreseeable result of this drop would include damage to the disposal container that would require repackaging. If this were to occur, operations personnel would move away from the event and develop a plan to cover the equipment (to prevent direct radiation effects) and repackage the equipment in a replacement disposal container. These recovery actions would be planned in accordance with the site procedures under principles to maintain radiological exposure as low as reasonably achievable. Any potential worker doses would be significantly below DOE's administrative control level of 2,000 millirem (mrem) per year for a worker, and below the SRS contractor's administrative control level of 500 mrem per year. This exposure would be expected to result in zero LCFs. There would be no dispersion or release of radiological materials from an accident involving contaminated process equipment on site; therefore, DOE would not expect any off-site consequences from this accident scenario.

Waste management impacts at SRS and the potential disposal sites would be minimal. Based on sample data (see Appendix A of the Final EA), DOE has a sound basis to conclude that the waste stream meets Criterion 1 of the HLW interpretation. At the time of implementing any of the alternatives, DOE would follow the waste acceptance process for the commercial disposal facility. The wastes would only be accepted for disposal if the volume and radiological constituents fall within the bounds of the applicable facility's license and waste acceptance criteria. As a result, the LLW would result in negligible waste management impacts for either licensed disposal facility.

The transportation of contaminated process equipment would involve approximately 31 radiological truck shipments and 31 non-radiological return truck shipments under both Alternatives 1 and 2. The primary difference between the two alternatives is the distance traveled from SRS. Under Alternative 1, disposal containers would be shipped from SRS to WCS (approximately 1,400 miles) and under Alternative 2, disposal containers would be shipped from SRS to WCS or Energy*Solutions* (approximately 2,200 miles). The waste would be packaged and shipped in accordance with USDOT requirements. The potential radiological and nonradiological risks to the truck crew and the public along the transportation route would be negligible. In the event an accident did occur, impacts to water and ecological resources would be extremely unlikely because the solid form would not be dispersible.

Consistent with both CEQ and DOE NEPA regulations, the analysis in the Final EA focused on the subjects relevant to the Proposed Action and potential impacts. Based on a screening analysis described in the Final EA, the following resource areas did not require additional detailed analysis: land use; noise; geology and soils; visual, water (surface, groundwater, and wetlands), and ecological resources (biota, threatened and endangered species); cultural and paleontological resources; socioeconomics and environmental justice; infrastructure and utilities; and industrial safety.

IV. External Review and Comments

Three comment documents were received during the public comment period on the Draft EA. Commenters included one Federal agency, one state agency, and one local community organization. Appendix B of the Final EA includes the comments delineated within each comment document and DOE's responses to the comments. DOE considered all public comments received in preparing the Final EA.

V. Determination

In the Final EA, DOE evaluated the potential environmental impacts associated with packaging, transportation, and disposal of contaminated process equipment from SRS at a licensed commercial LLW disposal facility outside of the state of South Carolina. Implementation of either action alternative analyzed in the Final EA would entail minor impacts and low risks and would not constitute a major Federal action significantly affecting the quality of the human environment in accordance with DOE's NEPA implementing procedures, 10 CFR part 1021, and the regulations promulgated by the CEQ for implementing NEPA, 40 CFR 1501.6. Therefore, the preparation of an environmental impact statement is not required.

Based on the analysis in the Final EA, DOE intends to ship the contaminated process equipment to the WCS FWF, a licensed off-site commercial disposal facility located in Andrews County, Texas, for disposal (Alternative 1). DOE has characterized the contaminated process equipment, which included sampling analyses (see Final EA, Appendix A), and prepared a technical evaluation and an official determination that demonstrate and document, that the SRS contaminated process equipment meets Criterion 1 for non-HLW under DOE's interpretation of the AEA and NWPA definition of HLW. The technical reports are available at: *https://www.energy.gov/em/high-level-radioactive-waste-hlw-interpretation.* Current characterization analysis shows that the disposal containers of contaminated process equipment are either Class B LLW (Tank 28F salt sampling drill string) or Class C LLW (glass bubblers and glass pumps). Of the licensed commercial facilities analyzed in the Final EA, the WCS FWF is the only facility that can accept Class B and Class C LLW for disposal. DOE intends to initiate shipments of the SRS contaminated process equipment in 2023.

Signing Authority

This document of the Department of Energy was signed on July 14, 2023, by Kristen G. Ellis, Acting Assistant Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, 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 July 14, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–15308 Filed 7–19–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–895–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Tioga Lateral Waiver and Hess NRA Filing to be effective 9/1/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5001.
Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: RP23–896–000.
Applicants: Minnesota Municipal Power Agency v. Northern Natural Gas Company.
Description: Complaint of Minnesota Municipal Power Agency v. Northern Natural Gas Company.
Filed Date: 7/13/23.
Accession Number: 20230713–5141.
Comment Date: 5 p.m. ET 8/2/23.

Docket Numbers: RP23–897–000.
Applicants: Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CGT—Pricing Index Clarification to be effective 8/14/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5002.
Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: RP23–898–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Revisions to Part 6 for Contract Assignment to be effective 8/1/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5062.
Comment Date: 5 p.m. ET 7/26/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15429 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10821–005]

Pacific Gas and Electric Company; Notice of Waiver Period for Water Quality Certification Application

On July 14, 2023, Pacific Gas and Electric Company (PG&E) submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the California State Water Resources Control Board (California Water Board), in conjunction with the above captioned project. Pursuant to section 401 of the Clean Water Act [1] and section 4.34(b)(5) of the Commission's regulations,[2] a state certifying agency is deemed to have waived its certifying authority if it fails or refuses to act on a certification request within a reasonable period of time, which is one year after the date the certification request was received. Accordingly, we hereby notify the California Water Board of the following:

Date the California Water Board received the certification request: July 13, 2023.

If the California Water Board fails or refuses to act on the water quality certification request on or before July 13, 2024, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15423 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 33 U.S.C. 1341(a)(1).

[2] 18 CFR 4.34(b)(5).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2639–028]

Northern States Power Company—Wisconsin; Notice of Application Accepted for Filing; Soliciting Motions To Intervene and Protests; Ready For Environmental Analysis; and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2639–028.

c. *Date filed:* November 30, 2021.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Cornell Hydroelectric Project.

f. *Location:* On the Lower Chippewa River, in the township of Cornell, Chippewa County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Matthew Miller, Hydro License Compliance Consultant, Xcel Energy, 1414 W Hamilton Ave, PO Box 8, Eau Claire, WI 54702; phone: 715–737–1353; email: *Matthew.j.miller@xcelenergy.com* or James Zyduck, Director Hydro Plants, Xcel Energy, 1414 W Hamilton Ave, PO Box 8, Eau Claire, WI 54702.

i. *FERC Contact:* Michael Davis (202) 502–8339, *Michael.Davis@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs- filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2639–028.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Cornell Hydroelectric Project consists of the following existing facilities:* (1) a non-overflow concrete bulkhead with intake; (2) a powerhouse with an integral intake, four turbine-generator units; (3) two gated spillways; (4) a concrete non-overflow dam section; (5) an overflow spillway with flashboards; (5) an earthen embankment; (6) a step-up transformer; and (7) a transmission line.

m. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208- 3676 or TTY (202) 502–8659.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or

other pending projects. For assistance, contact FERC Online Support.

o. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and fishway prescriptions.	September 2023.
Deadline for filing reply comments.	October 2023.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15425 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5867–054]

Alice Falls Hydro, LLC; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 5867–054.

c. *Date Filed:* July 7, 2023.

d. *Applicant:* Alice Falls Hydro, LLC.

e. *Name of Project:* Alice Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Ausable River in Clinton and Essex counties, New York.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* David Fox, Senior Director, Regulatory Affairs. Alice Falls Hydro, LLC, Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland; (201) 306–5616 or *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Kelly Wolcott, (202) 502–6480, *kelly.wolcott@ferc.gov.*

j. *Deadline for filing comments:* August 13, 2023. Reply comments due August 28, 2023.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5867–054.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Alice Falls Hydro, LLC filed the Settlement Agreement for the project's relicense proceeding, on behalf of itself; the U.S. Department of the Interior, U.S. Fish and Wildlife Service; the New York State Department of Environmental Conservation; and the New York State Council of Trout Unlimited. The purpose of the Settlement Agreement is to resolve, among the signatories, relicensing issues related to project operation, fisheries, wildlife, water quality, and recreation. The Settlement Agreement includes proposed terms and conditions for run-of-river operation, minimum flow requirements, operation compliance monitoring, downstream fish passage and exclusion, sediment management, project recreation, an Invasive Species Management Plan, and a Bat and Eagle Protection Plan. Alice Falls Hydro, LLC requests that any license issued by the Commission for the Alice Falls Hydroelectric Project contain conditions consistent with the provisions of the Settlement Agreement and within the scope of its regulatory authority.

l. A copy of the Settlement Agreement may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document (*i.e.,* P–5867). At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15424 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9202–002]

Rupert, David E.; Notice of Filing

Take notice that on July 13, 2023, David E. Rupert submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on August 3, 2023.

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15427 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2275–050]

Public Service Company of Colorado; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed the Public Service Company of Colorado's application for an amendment to the license of the Salida Hydroelectric Project No. 2275 and have prepared an Environmental Assessment (EA) for the proposed amendment. The Salida Project consists of two developments, Salida No. 1 and Salida No. 2. The licensee has determined that the Salida No. 1 development is no longer economical. The licensee proposes to amend the existing license for the project to decommission the Salida No. 1 development by removing the Garfield and Fooses dams and reservoirs, pipeline, penstock, powerhouse, and substation. The Salida Project is located on the South Arkansas River and Fooses Creek, approximately 6 miles west of the town of Poncha Springs in Chaffee County, Colorado. The project partially occupies federal land managed by the U.S. Forest Service within the Pike-San Isabel National Forests.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the license, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2275) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by August 14, 2023.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2275–050.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

For further information, contact Rebecca Martin at 202–502–6012 or *Rebecca.Martin@ferc.gov*.

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15426 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–504–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 27, 2023, Columbia Gas Transmission (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, for authorization to abandon one injection/withdrawal well, connecting pipe, and appurtenant facilities. All of the above facilities are located in the Wellington Storage Field in Lorain County, Ohio. The project will allow Columbia to protect the integrity of the Wellington Storage Field as well as Columbia's certificated facilities and services and thereby safeguard the interests of Columbia's customers, affected landowners, and the environment. The estimated cost for the project is $550,000, all as more fully set forth in the request 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. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or *david_alonzo@tcenergy.com*.

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 September 12, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person[2] 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,[3] and must be submitted by the protest deadline, which is September 12, 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[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is September 12, 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 September 12, 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.

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[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

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 CP23–504–000 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 [6]

(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 CP23–504–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: 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: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700, or by *david_alonzo@tcenergy.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.*

[6] 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.

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15428 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–106–000.
Applicants: GenOn Bowline, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of GenOn Bowline, LLC.
Filed Date: 7/13/23.
Accession Number: 20230713–5178.
Comment Date: 5 p.m. ET 8/3/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–226–000.
Applicants: Strauss Wind, LLC.
Description: Strauss Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/14/23.
Accession Number: 20230714–5000.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: EG23–227–000.
Applicants: Arica Solar, LLC.
Description: Arica Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/14/23.
Accession Number: 20230714–5121.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: EG23–228–000.
Applicants: Redonda PV LLC.
Description: Redonda PV LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/14/23.
Accession Number: 20230714–5122.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: EG23–229–000.
Applicants: Victory Pass I, LLC.
Description: Victory Pass I, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/14/23.
Accession Number: 20230714–5124.
Comment Date: 5 p.m. ET 8/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–467–009.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO Amendment to October 20, 2022 Cmplnc re: Technical Corrections to eTariff to be effective 9/8/2020.
Filed Date: 7/14/23.
Accession Number: 20230714–5109.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER21–9–004; ER21–86–004; ER21–88–004.
Applicants: Orange County Energy Storage 3 LLC, Orange County Energy Storage 2 LLC, Henrietta D Energy Storage LLC.
Description: Notice of Non-Material Change in Status of Henrietta D Energy Storage LLC, et al.
Filed Date: 7/13/23.
Accession Number: 20230713–5166.
Comment Date: 5 p.m. ET 8/3/23.

Docket Numbers: ER22–1748–002; ER22–1744–002; ER22–1751–002; ER15–1972–001; ER22–69–003; ER22–1745–002.
Applicants: Indeck-Olean Limited Partnership, Indeck Niles, LLC, Indeck Corinth Limited Partnership, Indeck-Yerkes Limited Partnership, Indeck Energy Services of Silver Springs, Inc., Indeck-Oswego Limited Partnership.
Description: Triennial Market Power Analysis for Northeast Region of Indeck Corinth Limited Partnership, et al.
Filed Date: 7/13/23.
Accession Number: 20230713–5174.
Comment Date: 5 p.m. ET 9/11/23.

Docket Numbers: ER22–2356–001.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 2023–07–14—Att S—Order 881 Compliance Filing to be effective 7/12/2025.
Filed Date: 7/14/23.
Accession Number: 20230714–5148.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2391–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: PNM CAISO Phase 2 Enhancements to be effective 7/1/2023.
Filed Date: 7/14/23.

Accession Number: 20230714–5021.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2392–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 6980; Queue No. AF2–060 to be effective 9/13/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5031.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2393–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 7006; Queue No. AF2–221 to be effective 9/13/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5049.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2394–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Chilatchee 44 LGIA Termination Filing to be effective 7/14/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5065.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2395–000.
Applicants: Victory Pass I, LLC.
Description: Baseline eTariff Filing: Second Amended and Restated Shared Facilities Common Ownership Agreement to be effective 9/15/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5066.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2396–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Chilatchee 115A LGIA Termination Filing to be effective 7/14/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5067.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2397–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Chilatchee 115B LGIA Termination Filing to be effective 7/14/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5070.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2398–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Interconnection Reforms—First Ready, First Served to be effective 9/30/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5079.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2399–000.
Applicants: Arica Solar, LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence to be effective 9/15/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5129.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2400–000.
Applicants: Redonda PV LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence to be effective 9/15/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5144.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23–2401–000.
Applicants: Entergy Texas, Inc.
Description: § 205(d) Rate Filing: Umbriel Solar LBA Agreement to be effective 7/14/2023.
Filed Date: 7/14/23.
Accession Number: 20230714–5145.
Comment Date: 5 p.m. ET 8/4/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: July 14, 2023..

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15430 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

	Docket Nos.
Data Collection for Analytics and Surveillance and Market-Based Rate Purposes	[RM16–17–001
DDP Specialty Electronic Materials US, Inc	ER21–331–000
MC (US) 3, LLC	ER21–330–000]

On April 20, 2023, the Commission issued an order announcing its intent to revoke the market-based rate authority of the sellers [1] captioned above that had failed to file their baseline submissions to the market-based rate relational database,[2] as required by Order No. 860.[3] The Commission directed that

[1] A "seller" is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d. Each seller is a public utility under section 205 of the FPA. 16 U.S.C. 824.

[2] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 183 FERC ¶ 61,027 (2023) (April 20 Order).

[3] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

DDP Specialty Electronic Materials US, Inc. (DDP Materials) and MC (US) 3, LLC (MC 3) file the required baseline submission within 15 days of the date of issuance of the April 20 Order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[4]

The time period for compliance with the April 20 Order has elapsed. DDP Materials and MC 3 failed to file their delinquent baseline submissions to the market-based rate relational database. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariffs of DDP Materials and MC 3. This revocation does not preclude DDP Materials and MC 3 from re-applying for market-based rate authority.

Dated: July 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15422 Filed 7–19–23; 8:45 am]

BILLING CODE 6717–01–P

[4] April 20 Order, 183 FERC ¶ 61,027 at Ordering Paragraph A.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10686–01–OAR]

Notice of July 2023 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled July 2023 Denial of Petitions for RFS Small Refinery Exemptions (''July 2023 SRE Denial Action'') in which EPA denied 26 small refinery exemption (SRE) petitions under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of, and the basis for, EPA's decision announced on July 14, 2023.

DATES: July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Benjamin Sarver, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004; telephone number: 202–564–1881; email address: *sarver.benjamin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that a small refinery[1] may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).[2] In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.[3]

II. Decision

The July 2023 SRE Denial Action[4] relies on the same approach and the same analyses described in the April 2022 SRE Denial Action[5] and the June 2022 SRE Denial Action.[6] In those actions, we conducted an extensive analysis and review of information provided to EPA by small refineries in their SRE petitions and we found that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or are purchased on the open market. This happens because the market price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to higher crude prices. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS program, there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered. As a result, we continue to conclude that small refineries do not face DEH. Given this conclusion and the other reasons described in the July 2023 SRE Denial Action, we have denied 26 SRE petitions for the 2016–2018 and 2021–2023 compliance years by finding the petitioning small refineries do not face DEH caused by compliance with their RFS obligations.

[1] The CAA defines a small refinery as ''a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels.'' CAA section 211(*o*)(1)(K).

[2] CAA section 211(*o*)(9)(B)(i).

[3] CAA section 211(*o*)(9)(B)(ii).

[4] ''July 2023 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–23–007, July 2023.

[5] ''April 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–005, April 2022.

[6] ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed only in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''any other nationally applicable . . . final action taken by the Administrator,'' or (ii) when a final action is locally or regionally applicable but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' The CAA reserves to EPA the complete discretion to decide whether to invoke the exception in (ii) described in the preceding sentence.[7]

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). Whether an action is ''nationally applicable'' is a narrow inquiry based only on the ''face'' of the action.[8] The question is whether the action itself is nationally applicable, not whether the nature and scope of the arguments raised or relief sought by a petitioner challenging the action are nationally applicable.[9] On its face, this final action is nationally applicable because it denies 26 SRE petitions for 15 small refineries across the country located within 14 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits. This final action is based on EPA's consistent nationwide application of its revised interpretation of the relevant CAA provisions and using its ''common, nationwide analytical method'' of RIN discount and RIN cost passthrough principles for evaluating all SRE petitions, no matter the location or market in which the small refineries operate.[10]

To the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the

[7] *Sierra Club* v. *EPA,* 47 F.4th 738, 745 (D.C. Cir. 2022) (''EPA's decision whether to make and publish a finding of nationwide scope or effect is committed to the agency's discretion and thus is unreviewable''); *Texas* v. *EPA,* 983 F.3d 826, 834–35 (5th Cir. 2020).

[8] *Dalton Trucking, Inc.* v. *EPA,* 808 F.3d 875, 881 (D.C. Cir. 2015).

[9] *S. Ill. Power Coop.* v. *EPA,* 863 F.3d 666, 670–71 (7th Cir. 2017); *ATK Launch Sys., Inc.* v. *EPA,* 651 F.3d 1194, 1198–1199 (10th Cir. 2011); *RMS of Ga., LLC* v. *EPA,* 64 F.4th 1368, 1372–1373 (11th Cir. 2023).

[10] *S. Ill. Power,* 863 F.3d at 671; *ATK Launch Sys.,*651 F.3d at 1197.

meaning of CAA section 307(b)(1).[11] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources. The substance of the Administrator's determination is entitled to deference.[12] In addition to applying a common analytical method, this action decides SRE petitions for 26 small refineries across the country located within 14 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits. Where, as here, the Administrator ''unambiguously determine[s] that [a] final action . . . has nationwide scope and effect'' and publishes that finding, ''all petitions for review of th[e] action belong in [the DC] Circuit'' under CAA section 307(b)(1).[13] This outcome promotes the principles underlying CAA section 307(b)(1) and ensures that petitions for review are consolidated in the D.C. Circuit where Congress designated them to be heard, avoiding piecemeal litigation, furthering judicial economy, and eliminating the risk of inconsistent judgments.[14]

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

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 District of Columbia Circuit by September 18, 2023.

Alejandra Nunez,

Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation.

[FR Doc. 2023–15401 Filed 7–19–23; 8:45 am]

BILLING CODE 6560–50–P

[11] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[12] The Administrator's determination is akin to other determinations that Congress leaves to an agency's broad discretion, such as the denial of a rulemaking petition, and merits considerable deference. *Cf., e.g., WildEarth Guardians* v. *EPA,* 751 F.3d 649, 651 (D.C. Cir. 2014) (discussing *Massachusetts* v. *EPA,* 549 U.S. 497 (2007)); *see also Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 543 (1978) (absent constitutional or statutory limitations or otherwise ''extremely compelling circumstances,'' agencies ''should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties''); *NAACP* v. *FPC,* 425 U.S. 662, 668 (1976) (reiterating the ''general proposition'' that agencies have discretion to determine how to shape their regulatory and adjudicatory actions).

[13] *Alcoa, Inc.* v. *EPA,* No. 04–1189, 2004 WL 2713116, at *1 (D.C. Cir. Nov. 24, 2004); *see also ATK Launch Sys., Inc.,* 651 F.3d at 1199 n.4 (acknowledging *Alcoa*).

[14] *Texas* v. *EPA,* No. 10–60961, 2011 WL 710598, at *4 (5th Cir. Feb. 24, 2011).

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB–2023–0007]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089448XB

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before August 14, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2023–0007 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2023–0007 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089448XB

Purpose and Use: Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to South Korea.

Brief non-proprietary description of the anticipated use of the item being exported: To be used for passenger air transport between South Korea and other countries within Asia.

To the extent that EXIM is reasonably aware, the item being exported is not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Korean Air Lines Co., Ltd.

Guarantor(s): N/A.

Description of Item Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–15380 Filed 7–19–23; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1170; FR ID 156257]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the

information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before September 18, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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.

OMB Control Number: 3060–1170.

Title: Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees—Notice Requirement Section 90.209.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8 respondents; 8 responses.

Estimated Time per Response: 0.5—4 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is 47 U.S.C. 151, 152, 154, 301, 302(a), 303, 307, and 308 unless otherwise noted.

Total Annual Burden: 12 hours.

Total Annual Cost: $14,000.

Needs and Uses: The information collection requirements contained in 47 CFR 90.209(b)(7) require EA-based 800 MHz SMR licensees authorized to exceed the standard channel spacing and authorized bandwidth under Section 90.209(b)(5) to provide at least 30 days written notice prior to initiating service in the 813.5–824/858.5–869 MHz band to every 800 MHz public safety licensee with a base station in the affected National Public Safety Planning Advisory Committee (NPSPAC) region, and every 800 MHz public safety licensee within 113 kilometers (70 miles) of the affected region.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–15386 Filed 7–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1225; FR ID 156024]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 21, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1225.

Title: National Deaf-Blind Equipment Distribution Program.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; State, local, or Tribal governments.

Number of Respondents and Responses: 2,261 respondents; 6,989 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, semiannual, quarterly, and monthly reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), and 719 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

Total Annual Burden: 20,890 hours.

Total Annual Cost: $3,000.

Needs and Uses: Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Public Law 111–260, 124 Stat. 2751 (2010); Public Law 111–265, 124 Stat. 2795 (2010) (making technical corrections); 47 U.S.C. 620. Section 719 of the Act requires the Commission to establish rules that define as eligible for up to $10,000,000 of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deafblind. 47 U.S.C. 620(a), (c). Accordingly, on August 5, 2016, the Commission released a Report and Order, document FCC 16–101, published at 81 FR 65948, September 26, 2016, adopting rules to establish the NDBEDP, also known as ''iCanConnect,'' as a permanent program. See 47 CFR 64.6201 through 64.6219.

In document FCC 16–101, the Commission adopted rules requiring the following:

(a) Entities must apply to the Commission for certification to receive reimbursement from the TRS Fund for NDBEDP activities. The FCC's Consumer and Governmental Affairs Bureau certified 56 programs—one for each state, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands—for a period of five years, from July 1, 2017, through June 30, 2022. Incumbent programs must apply to renew their certifications, if desired, and potential new entrants must also apply for certification by July 1, 2021.

(b) A program wishing to relinquish its certification before its certification expires must provide written notice of its intent to do so.

(c) Certified programs must disclose to the Commission actual or potential conflicts of interest.

(d) Certified programs must notify the Commission of any substantive change that bears directly on its ability to meet the qualifications necessary for certification.

(e) A certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted.

(f) When a new entity is certified as a state's program, the previously certified entity must take certain actions to complete the transition to the new entity.

(g) Certified programs must require an applicant to provide verification that the applicant is deafblind.

(h) Certified programs must require an applicant to provide verification that the applicant meets the income eligibility requirement.

(i) Certified programs must re-verify the income and disability eligibility of an equipment recipient under certain circumstances.

(j) Certified programs must permit the transfer of an equipment recipient's account when the recipient relocates to another state.

(k) Certified programs must include an attestation on consumer application forms.

(l) Certified programs must conduct annual audits and submit to Commission-directed audits.

(m) Certified programs must document compliance with NDBEDP requirements, provide such documentation to the Commission upon request, and retain such records for at least five years.

(n) Certified programs must submit reimbursement claims as instructed by the TRS Fund Administrator, and supplemental information and documentation as requested. In addition, the entity selected to conduct national outreach will submit claims for reimbursement on a quarterly basis.

(o) Certified programs must submit reports every six months as instructed by the NDBEDP Administrator. In addition, the entity selected to conduct national outreach will submit an annual report.

(p) Informal and formal complaints may be filed against NEDBEDP certified programs, and the Commission may conduct such inquiries and hold such proceedings as it may deem necessary.

(q) Certified programs must include the NDBEDP whistleblower protections in appropriate publications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–15385 Filed 7–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 155924]

Open Commission Meeting Thursday, July 20, 2023

July 13, 2023.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 20, 2023, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6); Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21).

Item No.	Bureau	Subject
		Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking which would adopt rules to enhance Tribal communities' access to the E-Rate program by streamlining certain program rules, making Tribal college and university libraries eligible for E-Rate support, and reducing administrative burdens in the program. The Commission will also seek comment on ways to further improve and simplify program rules for all E-Rate applicants.
2	Public Safety and Homeland Security	*Title:* Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline (PS Docket No. 23–5); Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No. 15–80); Implementation of the National Suicide Hotline Improvement Act of 2018 (WC Docket No. 18–336). *Summary:* The Commission will consider a Report and Order to ensure that when there is a communications service outage that potentially affects people's ability to reach the 988 Lifeline, the Commission and those who provide life-saving 988 crisis intervention services receive timely and actionable information.
3	Media	*Title:* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations (MB Docket No. 03–185). *Summary:* The Commission will consider a Report and Order allowing a limited group of existing channel 6 low power television stations to continue to provide analog FM radio service as an ancillary or supplementary service under specified rules.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–15402 Filed 7–19–23; 8:45 am]

BILLING CODE 6712–01–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 August 21, 2023.

A. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President) Formations, Transactions & Enforcement, 101 Market Street, San Francisco, California 94105. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *Big Poppy Holdings, Inc.,* to acquire additional voting shares up to 24.99 percent of Summit State Bank, both of Santa Rosa, California.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–15407 Filed 7–19–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission to Office of Management and Budget; National Survey of Child and Adolescent Well-Being-Third Cohort (NSCAW III) (Office of Management and Budget #0970–0202)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing an extension with revisions to the data collection activities conducted as part of the National Survey of Child and Adolescent Well-Being (NSCAW III) (Office of Management and Budget (OMB) #0970–0202). NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. This request will allow additional time to conduct participant data collections. Minor changes to the instruments are requested to restore an in-person data collection option.

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 *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. The first and second cohorts of NSCAW were initiated in 1999 and 2008, respectively. A major objective for the third cohort of NSCAW [NSCAW III] is to maintain the strengths of previous work, while better positioning the study to address the changing child welfare population. Phase I of NSCAW III, approved November 2016, is complete and included recruitment and sampling process data collection activities. Phase II of NSCAW III, approved July 2017, includes baseline and follow-up data collection activities, and panel maintenance activities. Phase II follow-up data collection and panel maintenance is still ongoing. Phase III of NSCAW III, approved in September 2020, includes data collection on the child welfare workforce in of participating agencies. Phase III data collection is complete, and analysis of the data is ongoing.

We seek approval for an extension with changes for the currently approved data collection activities, which includes follow-up data collection for Phase II and panel maintenance activities with NSCAW cohort members. As part of this request we are also proposing minor changes to the Phase II information collection. During the COVID–19 pandemic, the in-person option for data collection was removed. We are requesting to restore the previously approved in-person mode as an option for caregiver and child respondents for Phase II data collection.

Respondents: Children and caregivers enrolled in NSCAW III and child welfare agency personnel in participating NSCAW III agencies. Surveys and panel maintenance responses may be obtained by telephone, web, or in person.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Child Follow-up	387	1	.75	290	97
Caregiver Follow-up	409	1	.75	307	102
Caseworker Follow-up	126	3	1.0	379	126
Panel Maintenance with NSCAW Cohort Members	4,723	1	.08	378	126

Estimated Total Annual Burden Hours: 451.

Authority: 42 U.S.C. 628b; Continuing Appropriations Act of 2022.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–15381 Filed 7–19–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Health Network Development Program Performance Improvement Measurement System, OMB No. 0906–0010—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 18, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rural Health Network Development Program Performance Improvement Measurement System, OMB No. 0906–0010—Revision.

Abstract: The Rural Health Network Development (RHND) program is authorized under section 330A(f) of the Public Health Service Act (42 U.S.C. 254c(f)). The purpose of this program is to support integrated health care networks that collaborate to achieve efficiencies; expand access to, coordinate, and improve the quality of basic health care services and associated health outcomes; and strengthen the rural health care system as a whole. The program supports networks as they address gaps in service, enhance systems of care, and expand capacity of the local health care system.

RHND-funded programs promote population health management and the transition towards value-based care through diverse network participants that includes traditional and non-traditional network partners. Evidence of program impact demonstrated by outcome data and program sustainability are integral components of the program. This is a 4-year competitive program for networks composed of at least three participants that are existing health care providers. At least 66 percent of network participants must be located in a HRSA-designated rural area.

HRSA currently collects information about RHND awards using an OMB-approved set of performance measures and seeks to revise that approved collection. The proposed revisions are being implemented to better gather award recipient data in response to previously accumulated award recipient feedback, peer-reviewed research, and information gathered from the previously approved RHND measures.

Need and Proposed Use of the Information: This program needs measures that will enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to HRSA, including (a) access to care, (b) population demographics, (c) staffing, (d) consortium/network, (e) sustainability, and (f) project specific domains. All measures will evaluate HRSA's progress toward achieving its goals.

The proposed changes include additional components under questions surrounding the network's benefits and funding strategies, as well as the types of participant organizations. Questions surrounding Health Information Technology and Telehealth have been modified to reflect an updated telehealth definition based on renewed knowledge on the use of both Health Information Technology and Telehealth, and to improve understanding of how these important technologies are affecting HRSA award recipients. The Demographics and Services section now includes a question requesting grantees to identify which counties they have served during the project. Finally, revised National Quality Forum and Centers for Medicare & Medicaid Services measures were included to allow uniform collection efforts throughout the HRSA Federal Office of Rural Health Policy. The total number of responses has remained at 44 since the previous ICR. The new RHND grant cycle maintained the same number of award recipients and number of respondents.

Likely Respondents: Respondents will be award recipients of the Rural Health Network Development Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement and Measurement System Database	44	1	44	6	264
Total	44	1	44	6	264

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–15400 Filed 7–19–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and

Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the meeting on July 31, 2023, the Advisory Council subcommittees will present their recommendations for adoption by the full Advisory Council. The meeting will also include a presentation on the Alzheimer's disease bypass budget from the National Institutes of Health (NIH), a National Healthy Brain Initiative Road Map Series update by the Centers for Disease Control and Prevention (CDC), and federal updates.

DATES: The meeting will be held virtually on July 31, 2023 from 9:30 a.m. to 4:30 a.m. EST.

ADDRESSES: The meeting will be a hybrid of in-person and virtual. The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Thursday, July 27. Registered commenters will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. Note: There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. Public commenters will not be admitted to the virtual meeting before 3:30 p.m. but are encouraged to watch the meeting at *www.hhs.gov/live.* Should you have questions during the session, please email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Tuesday, August 1, 2023. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Tuesday, August 1, 2023 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov.* Note: The meeting will be available to the public live at *www.hhs.gov/live.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. app. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: subcommittee recommendations, NIA bypass budget, FDA drug coverage decisions, and CDC Health Brain Initiative.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available after the meeting. This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. Participants joining in person should note that seating may be limited. Those wishing to attend the meeting in person must send an email to *napa@hhs.gov* and put ''July 31 Meeting Attendance'' in the subject line by Thursday, July 27 so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

Authority: 42 U.S.C. 11225; section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

Miranda Lynch-Smith,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation Deputy Assistant Secretary for Human Services Policy.

[FR Doc. 2023–15406 Filed 7–19–23; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on the Draft HHS Scientific Integrity Policy

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice request for comment (RFC).

SUMMARY: The Department of Health and Human Services (HHS) is seeking public comment on its draft Scientific Integrity Policy through the Department of Health and Human Services website at *https://www.hhs.gov/programs/research/scientificintegrity.*

DATES: Submit comments on or before September 1, 2023.

ADDRESSES: Written comments can be provided by email, Fax, or U.S. mail.

Email: scientificintegrity@hhs.gov.

Fax: (202) 690–5882.

Mail: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Science and Data Policy, Attn: Scientific Integrity Comments, 200 Independence Avenue SW, Room 429E, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Casey Sullivan, (202) 205–8189.

SUPPLEMENTARY INFORMATION: The draft Department of Health and Human Services Scientific Integrity Policy is provided as part of implementation of the Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-based Policymaking,[1] to ensure that Agency stakeholders are given an opportunity to comment on this policy.

HHS developed the draft Scientific Integrity Policy (the draft policy) based on the National Science and Technology Council Framework for Federal Scientific Integrity Policy and Practice.[2] The draft policy includes specific provisions prohibiting political interference, ensuring independent review of scientific activities, facilitating the free flow of scientific information, prohibiting suppression or delay of scientific findings for non-scientific reasons, forbidding censorship or alteration of scientific findings, and protecting against retaliation. The draft policy also establishes clear procedures for reporting and handling allegations of

[1] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/.*

[2] *https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf.*

scientific integrity violations, including those involving alleged political interference.

This public comment request is an opportunity for HHS to refine and strengthen the draft policy. We look forward to receiving your comments by September 1, 2023. The text of the draft policy is available through the Department of Health and Human Services website at *https://www.hhs.gov/programs/research/scientificintegrity.* Following public comment, HHS's final Scientific Integrity Policy will be published on the HHS website by February 2024. The website will include a mechanism for reporting allegations of loss of scientific integrity in HHS work.

For those who may not have internet access, a hard copy can be requested from the contact point, Casey Sullivan, (202) 205–8189.

Sharon Arnold,

Associate Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2023–15408 Filed 7–19–23; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 1009 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 Deafness and Other Communication Disorders Special Emphasis Panel; Review of Voice, Speech, and Language Research Opportunities for New Investigators to Promote Workforce Diversity.

Date: August 1, 2023.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 17, 2023.

Victoria E. Townsend

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15395 Filed 7–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0018]

National Advisory Council

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee management; request for applicants for appointment to a subcommittee of the National Advisory Council (NAC).

SUMMARY: The Federal Emergency Management Agency (FEMA) requests that qualified individuals interested in serving on a subcommittee of the FEMA National Advisory Council (NAC) to provide advice regarding Preliminary Damage Assessments, apply for appointment as identified in this notice. Appointed members will serve on the subcommittee only and will not be members of the NAC.

DATES: FEMA will accept applications until 11:59 p.m. ET on August 10, 2023.

ADDRESSES: The only method for application package submission is by email. Application packages by U.S. Mail will not be considered. Please submit using the following method:

• *Email:* Manuel Barrios, Alternate Designated Federal Officer, Recovery Directorate, Office of Response and Recovery, FEMA, *fema-pda-act@fema.dhs.gov.*

• Save materials in one file using the naming convention, ''[Last Name]_[First Name]_PDA Application'' and attach to the email.

FEMA will send applicants an email that confirms receipt of your application and will notify you of the final status of your application once FEMA selects members.

FOR FURTHER INFORMATION CONTACT: Manuel Barrios, Alternate Designated Federal Officer, Recovery Directorate, Office of Response and Recovery, FEMA, (202) 212–3026, *fema-pda-act@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. ch. 10. As required by the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. Appointees may be designated as a Special Government Employee (SGE) as defined in section 202(a) of title 18, U.S.C., or as a Representative member. SGEs speak in a personal capacity as experts in their field and Representative members speak for the stakeholder group they represent.

The Preliminary Damage Assessment (PDA), National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, Sec. 5603, was signed into law on Dec. 23, 2022. The Act requires FEMA to convene an advisory panel consisting of emergency management personnel employed by State, local, Territorial, or Tribal authorities, and the representative organizations of such personnel, to assist the agency in improving critical components of the preliminary damage assessment process. This advisory panel will consider: (1) establishing a training regime to ensure preliminary damage assessments are conducted and reviewed under consistent guidelines; (2) utilizing a common technological platform to integrate data collected by state and local governments with data collected by the agency; and (3) assessing instruction materials provided by the agency for omissions of pertinent information or language that conflicts with other statutory requirements. The advisory panel will also identify opportunities for streamlining the consideration of preliminary damage assessments by the agency, including eliminating duplicative paperwork requirements and ensuring consistent communication and decision making among agency staff.

To serve on this advisory panel, FEMA will select:

(1) At least one representative from each of the ten (10) FEMA Regions

selected from emergency management personnel employed by State, local, Tribal, or Territorial authorities within each region.

(2) At least two representatives from national emergency management organizations.

(3) Such other members as the Administrator shall deem appropriate.

To the furthest extent practicable, representation on the advisory panel shall include emergency management personnel from both urban and rural jurisdictions. Members will not receive compensation for their service. Members may be required to file a confidential financial disclosure and complete ethics training provided by FEMA.

FEMA is requesting that individuals who are interested in and qualified to serve on the advisory panel apply for appointment. Appointments will be for a one-year term, with the possibility of renewal, which will begin Sept. 1, 2023.

To apply, please submit an application package to Manuel Barrios as listed in the **ADDRESSES** section of this notice. There is no application form, but each application package MUST include the following information:

- Cover letter, addressed to the Office of Response and Recovery, that includes current position title and employer or organization you represent, home and work mailing addresses, preferred telephone number, and email address; the discipline area position(s) for which you would like consideration; and why you are interested in serving on the PDA Advisory Panel.
- A summary of the most important accomplishments that qualify you to serve in the form of three to five (3–5) bullets, in fewer than 75 words total.
- Three (3) peer or supervisor references including full name, position title, employer or organization, preferred telephone number and email address. References must be able to attest to the qualifications and accomplishments you have listed.
- Resume or Curriculum Vitae (CV).

Your application package must be less than eight (8) total pages to be considered by FEMA. Information contained in your application package should clearly indicate your qualifications. FEMA will not consider incomplete applications. FEMA will review the information contained in application packages and make selections based on the requirements listed above, expertise in the subject matter area, and ability to meet membership expectations. FEMA will also consider overall composition, including diversity (including, but not limited to geographic, demographic, and experience) and mix of officials, emergency managers, and emergency response providers from State, local, Tribal, and Territorial governments, when selecting members.

DHS is committed to pursuing opportunities, consistent with applicable law, to compose a panel that reflects the diversity of the United States. DHS does not discriminate based on race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all its recruitment actions. Federally registered lobbyists may not apply.

Expectations: Appointees to this volunteer service opportunity are expected to fully participate in meetings, work with fellow members as a team, and maintain a high degree of integrity. The NAC Bylaws contain more information and can be found at: *https://www.fema.gov/sites/default/files/documents/fema_nac-bylaws-041223.pdf.* FEMA estimates a four (4) hour minimum time commitment per month for regular communications, special activities, and subcommittee participation. Some selected members will serve in leadership roles and participate in additional meetings and activities. Members may be invited to attend in-person meetings of the NAC up to twice per year, typically three (3) days for each meeting. FEMA does not pay members for their time, but may reimburse travel expenses such as airfare, lodging, meals, incidentals, and other transportation costs within Federal Travel Regulations when pre-approved by the Designated Federal Officer.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–15410 Filed 7–19–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0017]

National Advisory Council

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee management; request for applicants for appointment to a subcommittee of the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) requests that qualified individuals interested in serving on a subcommittee of the FEMA National Advisory Council (NAC), apply for appointment as identified in this notice to provide advice as required by the Planning for Animal Wellness Act. Appointed members will serve on the subcommittee only and will not be members of the NAC.

DATES: FEMA will accept applications until 11:59 p.m. Eastern Time on August 10, 2023.

ADDRESSES: The only method for application package submission is by email. Application packages by U.S. Mail will not be considered. Please submit using the following method: *Email:* Dawn Essenmacher, Alternate Designated Federal Officer, Office of Policy and Program Analysis, FEMA, *FEMA-PAW-Act@fema.dhs.gov,* (202) 212–3026. Save materials in one file using the naming convention, ''[Last Name]_[First Name]_PAW Application'' and attach to the email.

FEMA will send you an email that confirms receipt of your application and will notify you of the final status of your application once FEMA selects members.

FOR FURTHER INFORMATION CONTACT: Dawn Essenmacher, Alternate Designated Federal Officer, Office of Policy and Program Analysis, FEMA, *FEMA-PAW-Act@fema.dhs.gov,* (202) 212–3026.

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. ch. 10. As required by the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. Appointees may be designated as a Special Government Employee (SGE) as defined in section 202(a) of title 18, U.S.C., or as a Representative member. SGEs speak in a personal capacity as experts in their field and Representative members speak for the stakeholder group they represent.

The Planning for Animal Wellness (PAW) Act, Public Law 117–212, was signed into law on October 17, 2022. The Act requires FEMA to create a working group to review best practices and Federal guidance, as of the date of

enactment of this Act, on congregate and non-congregate sheltering and evacuation planning, as it relates to the needs of household pets, service and assistance animals, and captive animals, as appropriate, in emergency and disaster preparedness, response, and recovery. It also requires FEMA to determine whether the existing best practices and Federal guidance are sufficient. If the Administrator, after reviewing the subcommittee's advice, determines that existing best practices and Federal guidance are insufficient, the Administrator will determine whether to publish new guidance, in consultation with the subcommittee. The subcommittee will also encourage and foster collaborative efforts among individuals and entities working to address the needs of household pets, service and assistance animals, and captive animals, as appropriate, in emergency and disaster preparedness, response, and recovery.

To serve on this subcommittee, FEMA will select:

- At least two representatives of State governments with experience in animal emergency management;
- At least one Tribal Nation citizen or representative with experience in animal emergency management;
- At least one Territorial government representative with experience in animal emergency management;
- At least two representatives of local governments with experience in animal emergency management;
- At least two representatives from academia;
- At least two veterinary experts;
- At least two representatives from nonprofit organizations working to address the needs of household pets and service animals in emergencies or disasters;
- At least one representative from the Federal Animal Emergency Management Working Group; and
- Any other members that the Administrator deems appropriate, which could be based on specific experience not identified, or diverse perspectives.

Members will not receive compensation for their service. Members may be required to file a confidential financial disclosure and complete ethics training provided by FEMA. FEMA is requesting that individuals who are interested in and qualified to serve on the subcommittee apply for appointment. Appointments will be for a one-year term, with the possibility of renewal, and will begin September 1, 2023.

To apply, please submit an application package to FEMA's Office of Policy and Program Analysis as listed in the **ADDRESSES** section of this notice. There is no application form, but each application package MUST include the following information:

- Cover letter, addressed to the Office of Policy and Program Analysis, that includes current position title and employer or organization you represent, home and work mailing addresses, preferred telephone number, and email address; the discipline area position(s) for which you would like consideration; and why you are interested in serving on the subcommittee.
- A summary of the most important accomplishments that qualify you to serve in the form of three to five (3–5) bullets, in fewer than 75 words total.
- Three (3) peer or supervisor references including full name, position title, employer or organization, preferred telephone number and email address. References must be able to attest to the qualifications and accomplishments you have listed.
- Resume or Curriculum Vitae (CV).

Your application package must be less than eight (8) total pages to be considered by FEMA. Information contained in your application package should clearly indicate your qualifications. FEMA will not consider incomplete applications. FEMA will review the information contained in application packages and make selections based on the requirements listed above, expertise in the subject matter area, and ability to meet membership expectations. FEMA will also consider overall composition, including diversity (including, but not limited to geographic, demographic, and experience) and mix of officials, emergency managers, and emergency response providers from State, local, Tribal, and Territorial governments, when selecting members.

DHS does not discriminate based on race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a subcommittee that reflects the diversity of the United States. Federally registered lobbyists may not apply.

Expectations: Appointees to this volunteer service opportunity are expected to fully participate in meetings, work with fellow members as a team, and maintain a high degree of integrity. The NAC Bylaws contain more information and can be found at: *https://www.fema.gov/sites/default/files/documents/fema_nac-bylaws-041223.pdf.* FEMA estimates a three (3) hour minimum time commitment per month for regular communications, special activities, and subcommittee participation. Some selected members will serve in leadership roles and participate in additional meetings and activities. Members may be invited to attend in-person meetings of the NAC up to twice per year, typically three (3) days for each meeting. FEMA does not pay members for their time, but may reimburse travel expenses such as airfare, lodging, meals, incidentals, and other transportation costs within Federal Travel Regulations when pre-approved by the Designated Federal Officer.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–15409 Filed 7–19–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: Aircraft Operator Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0003, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Aircraft operators must provide certain information to TSA and adopt and implement a TSA-approved security program. These programs require aircraft operators to maintain and update records to ensure compliance with security provisions set forth in 49 CFR part 1544.

DATES: Send your comments by September 18, 2023.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0003; Aircraft Operator Security, 49 CFR Part 1544

The information collected is used to determine compliance with 49 CFR part 1544 and to ensure passenger safety by monitoring aircraft operator security procedures. TSA implements aircraft operator security standards at part 1544 to require each aircraft operator, to which this part applies, to adopt and carry out a security program. This TSA-approved security program establishes procedures that aircraft operators must carry out to protect persons and property traveling on flights provided by the aircraft operator against acts of criminal violence, aircraft piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft. Aircraft operators must also comply with TSA-issued security program amendments and Security Directives (SDs).

TSA may amend a security program under 49 CFR 1544.105(c) if safety and the public interest require an amendment, and may issue an emergency amendment under 49 CFR 1544.105(d) if TSA determines there is an emergency requiring immediate action with respect to safety in air transportation or air commerce that makes the procedures in 49 CFR 1544.105 contrary to the public interest. Furthermore, TSA may issue an Information Circular (IC) to notify aircraft operators of security concerns. Compliance with the IC is voluntary. However, when TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

As part of their security programs, affected aircraft operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in 49 CFR part 1544, including maintaining records of direct aircraft operator employees and their authorized representative's actions related to operations security. Additional required records include validation of current fingerprint-based criminal history records check (CHRC) and Security Threat Assessment status of those employees. Part 1544 also requires affected aircraft operators to submit security program amendments and SD compliance plans to TSA, when applicable, and to make their security programs and associated records available for inspection and copying by TSA to ensure transportation security and regulatory compliance.

In addition, 49 CFR part 1544 requires the affected aircraft operators to submit information on aircraft operators' flight crews and other employees, passengers, and cargo. This collection also includes documentation of aircraft interior and exterior security search prior to the departure for the first flight of the day. Additional document review includes security programs, amendments, CHRC applications; and recordkeeping requirements for security programs, CHRCs, training, and incident and suspicious activity reporting. Aircraft operators may provide the information electronically or in writing.

Aircraft operators must ensure that certain flight crew members and employees (including certain contract employees and authorized representatives) submit to and receive a CHRC. These requirements apply to flight crew members and employees with unescorted access authority to a Security Identification Display Area or who perform screening, checked baggage, or cargo functions. As part of the CHRC process, the individual must provide identifying information, including fingerprints. Additionally, aircraft operators must maintain these records and make them available to TSA for inspection and copying upon request.

TSA is revising the burden of the information collection by providing more detail regarding the security program amendments information collection. TSA is now breaking out the burden elements of the security program amendments information collection to include security program amendments requested by aircraft operators, TSA-required security program amendments (including emergency amendments), temporary changed conditions, SDs, and voluntary ICs.

TSA estimates that there will be approximately 634 respondents to the information requirements described above, with a total annual burden estimate of approximately 542,650 hours.

Dated: July 15, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2023–15377 Filed 7–19–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–40]

30-Day Notice of Proposed Information Collection: Survey of Market Absorption of New Multifamily Units; OMB Control No.: 2528–0013

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:* August 21, 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. Interested persons are

also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; phone number 202–402–5535 or email: *PaperworkReductionActOffice@hud.gov.* 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 May 17, 2023 at 88 FR 31515.

A. Overview of Information Collection

Title of Information Collection: Survey of Market Absorption of New Multifamily Units.

OMB Approval Number: 2528–0013.

Type of Request: Extension without change to a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed; that is, taken off the market, usually by being rented or sold, over the course of the first 12 months following completion of a building. The data are collected at quarterly intervals until the 12 months conclude, or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, including asking rent/price, number of units, and number of bedrooms. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public.

Respondents: Rental Agents/Builders.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
SOMA	12,000	4	48,000	.125 (30 minutes total divided by four interviews).	6,000	$40.51	$243,060

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 comments 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 Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–15383 Filed 7–19–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500171208]

Notice of Temporary Closure of Public Lands for the 2024–2027 L'Étape Las Vegas by Tour de France, Bicycle Event, Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands.

SUMMARY: The Red Rock/Sloan Field Office announces the temporary closure of certain public lands under its administration. The Red Rock Canyon National Conservation Area in Las Vegas, Nevada, is used by public recreationists, and a temporary closure is needed on the 13-mile Scenic Drive and associated facilities to limit access to the area for the annual 2024 through 2027 L'Étape Las Vegas by Tour de France bicycle event for safety purposes in order to minimize the risk of potential collisions between the public and participants during the event.

DATES: This is a four-year, one-day- per-year event occurring on the first Sunday in May starting May 5, 2024, and ending on May 2, 2027. The temporary closure for the 2024 L'Étape Las Vegas event will go into effect at 6:00 a.m. (all times Pacific) on May 5, 2024, and will remain in effect until 1:00 p.m. on May 5, 2024. The temporary closure for the 2025 L'Étape Las Vegas event will go into effect at 6:00 a.m. on May 4, 2025, and will remain in effect until 1:00 p.m. on May 4, 2025. The temporary closure for the 2026 L'Étape Las Vegas event will go into effect at 6:00 a.m. on May 3, 2026, and will remain in effect until 1:00 p.m. on May 3, 2026. The temporary closure for the 2027 L'Étape Las Vegas event will go into effect at 6:00 a.m. on May 2, 2027, and will remain in effect until 1:00 p.m. on May 2, 2027.

ADDRESSES: The temporary closure order and map of the temporary closure area for each event will be posted at the

BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130; Red Rock Canyon National Conservation Area, 3205 State Highway 159, Las Vegas, Nevada 89161; Red Rock Canyon National Conservation Area Campground, 3293 Moenkopi Rd., Las Vegas, Nevada 89161; Red Spring Picnic Area in Calico Basin along Calico Basin Road; Cowboy Trails Parking Area at Mile Marker 11 on Nevada State Route 159; Red Rock Canyon Dedication Overlook Parking Area at Mile Marker 10 on Nevada State Route 159; and on the BLM website: *https://www.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Sorom, Outdoor Recreation Planner, (702) 515–5353, or *ksorom@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: This action is being taken to help ensure public safety during the official permitted running of the 2024–2027 L'Étape Las Vegas by Tour de France event. The public lands affected by this closure are described as follows:

Red Rock Canyon National Conservation Area—13 Mile Scenic Loop Drive

Mount Diablo Meridian, Nevada

T. 20 S., R. 58 E.,
Sec. 33, SE¼SE¼;
Sec. 34, NE¼, E½NW¼, NE¼SW¼, S½SW¼, and NE¼SE¼;
Sec. 35, SW¼NW¼, W½SW¼, SE¼SW¼, and S½SE¼.
T. 21 S., R. 58 E.,
Sec. 1, lots 6, 7, 9, 15, 16, 20, and 21;
Sec. 2, lots 1 and 2;
Sec. 3, lot 4, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, and NE¼SE¼;
Sec. 10, NE¼, E½NW¼, NE¼SW¼, and S½SW¼;
Sec. 12, E½NE¼ and E½SE¼;
Sec. 14, W½SW¼ and SE¼SW¼;
Sec. 15, S½NE¼, N½NW¼, SE¼NW¼, and NE¼SE¼;
Sec. 23, W½NE¼ and E½NW¼.
T. 21 S., R. 59 E.,
Sec. 7, lot 4.

The area described contains 2,596.22 acres, according to the official plats of the surveys of the said lands on file with the Bureau of Land Management (BLM). This description lists each of the component lots and aliquot parts that contain a portion of the 13-mile Scenic Drive. The net acreage of the roadway for the 13-mile Scenic Drive is approximately 39 acres.

The temporary closure will be posted on roads leading to the public lands to notify the public of the closure for each event. The closure area includes Red Rock Canyon National Conservation Area Scenic Drive, adjacent parking lots, the Visitor Center, and Entrance Station. Under the authority of section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 733(a)), 43 CFR 8360.0–7 and 43 CFR 8364.1), the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description above is closed to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants, and BLM personnel. Access routes leading to the closed area will be signed to indicate a closure ahead. No vehicle stopping or parking in the closed area, except for designated parking areas, will be permitted. Event participants are required to remain within designated areas only, and public spectators are not allowed on the event route.

The BLM will enforce the following restrictions for the duration of the closure to ensure the safety of the public, event participants, and personnel. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Public access to the Visitor Center within the closure area.
- Public use of Visitor Center restrooms.
- Public use of parking areas and restrooms within the closure area.
- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or feature. Vehicles so parked are subject to citation, removal, and impoundment at the owner's expense.
- Operating a vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier or device.

Exceptions: Temporary closure restrictions do not apply to activities conducted under contract with the BLM, agency personnel monitoring the event, or activities conducted under an approved plan of operation. Authorized users must have in their possession a written permit or contract from the BLM, signed by the authorized officer.

Enforcement: Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1.)

Catrina M. Williams,
Field Manager—Red Rock/Sloan Field Office.

[FR Doc. 2023–15376 Filed 7–19–23; 8:45 am]
BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO #4500171743]

Call for Nominations to the Missouri Basin and Western Montana Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management's (BLM's) Missouri Basin and Western Montana Resource Advisory Councils (RACs) to fill existing vacancies, as well as for member terms that are scheduled to expire. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than August 21, 2023.

ADDRESSES: Applications for the Missouri Basin RAC should be sent to Mark Jacobsen, BLM Eastern Montana/Dakotas District Office, 111 Garryowen Road, Miles City, MT 59301; (406) 233–2831; *mjacobse@blm.gov;* or Gina Baltrusch, BLM North Central Montana District Office, 1220 38th Street N, Great Falls, MT 59405; (406) 791–7778; *gbaltrusch@blm.gov.*

Applications for the Western Montana RAC should be sent to David Abrams, BLM Butte Field Office, 106 North Parkmont, Butte, MT 59701; (406) 533–7617; *dabrams@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Boucher, BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, MT 59101; (406) 896–5011; *aboucher@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 Federal Land Policy and Management Act directs the Secretary of the Interior to involve the public in planning and issues related to the management of lands administered by the BLM through the establishment of 10- to 15-member citizen-based advisory councils that are managed in accordance with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water; represent Indian Tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public-at-large.

Individuals may nominate themselves or others. Missouri Basin RAC Nominees must be residents of the State of Montana, North Dakota, or South Dakota. Western Montana RAC Nominees must be residents of the State of Montana. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—Completed a RAC application, which can either be obtained through the nominee's BLM office or online at: *https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf;*
—Letters of reference from represented interests or organizations; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Montana/Dakotas State Office will issue a press release providing additional information for submitting nominations.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

(Authority: 43 CFR 1784.4–1)

Sonya Germann,

Montana/Dakotas State Director.

[FR Doc. 2023–15358 Filed 7–19–23; 8:45 am]

BILLING CODE 4331–20–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–690–691 and 731–TA–1619–1627 (Preliminary)]

Paper Shopping Bags From Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam, provided for in subheadings 4819.30.00 and 4819.40.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of China and India.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 31, 2023, the Coalition for Fair Trade in Shopping Bags, a coalition whose members include Novolex Holdings, LLC, Charlotte, North Carolina, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of paper shopping bags from China and India and LTFV imports of paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam. Accordingly, effective May 31, 2023, the Commission instituted countervailing duty investigation Nos. 701–TA–690–691 and antidumping duty investigation Nos. 731–TA–1619–1627 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 6, 2023 (88 FR 37097). The Commission conducted its conference on June 21, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 41380, (June 26, 2023) and 88 FR 41589, (June 27, 2023).

and filed its determinations in these investigations on July 17, 2023. The views of the Commission are contained in USITC Publication 5448 (July 2023), entitled *Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam: Investigation Nos. 701–TA–690–691 and 731–TA–1619–1627 (Preliminary).*

By order of the Commission.

Issued: July 17, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–15440 Filed 7–19–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain LED Lighting Devices, LED Power Supplies, Components Thereof, and Products Containing Same, DN 3689;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Signify North America Corporation and Signify Holding B.V. on July 14, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain led lighting devices, led power supplies, components thereof, and products containing same. The complaint names as a respondent: Current Lighting Solutions, LLC of Beachwood, OH. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j). Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3689'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews,

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 14, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–15371 Filed 7–19–23; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1328]

Certain Pillows and Seat Cushions, Components Thereof, and Packaging Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 13, 2023, the presiding administrative law judge (''ALJ'') issued an Initial Determination granting Complainant Purple Innovation, LLC's motion for summary determination on violation and a Recommended Determination on remedy and bonding (''ID/RD''). The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. 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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. The ALJ recommended the issuance of a limited exclusion order (''LEO'') directed to certain pillows and seat cushions, components thereof, and packaging thereof that infringe certain claims of U.S. Patent No. 10,863,837 imported, sold for importation, and/or sold after importation by respondent Foshan Dirani Design Furniture Co., Ltd. In addition, the ALJ recommended the issuance of a general exclusion order (''GEO'') directed to certain pillows and seat cushions, components thereof, and packaging thereof that infringe certain claims of U.S. Patent No. 10,772,445 (the ''445 patent''). In the alternative, the ALJ recommended the issuance of a LEO as to subject products that infringe the '445 patent imported, sold for importation, and/or sold after importation by respondents Dongguan Jingrui Silicone Technology Co., Ltd., Hangzhou Lydia Sports Goods Co., Ltd., or Shenzhen Leadfar Industry Co. Ltd. Regardless of whether a GEO or LEO issues, the ALJ also recommended the issuance of cease and desist orders as to each of the respondents.[1] The ALJ further recommended that bond during the Presidential review period be set at one hundred percent (100%) of the entered value of subject products.

[1] The respondents addressed in the ID/RD are Foshan Dirani Design Furniture Co., Ltd., Dongguan Jingrui Silicone Technology Co., Ltd., Hangzhou Lydia Sports Goods Co., Ltd., and Shenzhen Leadfar Industry Co. Ltd., who were each found in default pursuant to Order No. 16 (Jan. 11, 2023), *unreviewed by* Comm'n Notice (Feb. 8, 2023), and Order No. 21 (Mar. 8, 2023), *unreviewed by* Comm'n Notice (Mar. 30, 2023).

Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's ID/RD. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 14, 2023.

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–1328'') in a prominent place on the cover page and/or the 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. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). 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 nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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: July 14, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–15361 Filed 7–19–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0072]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Explosives Employee Possessor Questionnaire—ATF Form 5400.28

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on Monday, May 15, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens by telephone at 304–616–4400 or by email at *Shawn.Stevens@atf.gov.*

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0072. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Explosives Employee Possessor Questionnaire.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: ATF Form 5400.28.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Affected Public: Business or other for-profit.

Abstract: Persons employed in the explosives business or operations who are required to ship, transport, receive, or possess explosive materials, will complete the Explosives Employee Possessor Questionnaire—ATF Form 5400.28. The form will be submitted to ATF, to determine whether the person who provided the information, is qualified to be an employee possessor in an explosives business.

5. *Obligation to Respond:* Mandatory: The statutory requirements are implemented in Title 18 U.S.C. 843.

6. *Total Estimated Number of Respondents:* 83,125.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 27,708 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 14, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15353 Filed 7–19–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0074]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Explosives Responsible Person Questionnaire—ATF Form 5400.13A/5400.16

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on Monday, May 15, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens by telephone at 304–616–4400 or by email at *Shawn.Stevens@atf.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0074. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Explosives Responsible Person Questionnaire.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: ATF Form 5400.13A/ 5400.16.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Affected Public: Private Sector—business or other for-profit, Individuals or households.

Abstract: The regulations at 27 CFR 555.57 require that all persons holding ATF explosives licenses or permits as of May 23, 2003, must report descriptive information on their responsible persons and possessors of explosives to ATF. Subsequent changes to their list of persons must also be reported.

5. *Obligation to Respond:* Mandatory: The statutory requirements are implemented in title 27 CFR 555.57.

6. *Total Estimated Number of Respondents:* 11,875.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 3,958 hours.

10. Total Estimated Annual Other Costs Burden: The cost for this collection is $771,875.00 ($65.00 per hour × 11,875 for first time respondents). However, subsequent submissions of this IC would have no public costs since all applications can be submitted electronically by fax or email to ATF for processing.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 14, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15352 Filed 7–19–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0090]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Previously Approved Collection; National Firearms Act (NFA)—Special Occupational Taxes (SOT)—ATF Form 5630.7

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 18, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Melissa Mason, National Firearms Act Division, Government Support Branch, Needy Road, Suite: NFA, Martinsburg, WV 25405, either by mail at mailing address, by email at *NFAOMBCOMMENTS@ ATF.GOV,* or telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: ATF has been collecting Special Occupational Taxes (SOT) under the National Firearms Act (NFA) (title 26, U.S.C. chapter 53). Firearms dealers, manufacturers, and importers must pay this tax in order to conduct multiple transfers of specified weapons (such as machine guns) within the tax year. The Information Collection (IC) OMB 1140–0090 is being revised due to the removal of the previously corresponding ATF Forms 5630.5R and 5630.5RC. These forms will no longer be required going forward. ATF Form 5630.7 will be the only form necessary to fulfill the requirement for this IC.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* National Firearms Act (NFA)—Special Occupational Taxes (SOT).

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 5630.7. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Business or other for-profit entity. The obligation to respond is mandatory per title 26,U.S.C. 5801, chapter 53.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 16,659 respondents will respond to this collection once annually, and it will take each respondent approximately 15 minutes to complete their responses.

6. An estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 4,164 hours, which is equal to 16,659 (total respondents) * 1 (# of response per respondent) * .25 (15 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The estimated cost for all 16,659 respondents to mail the SOT form (ATF Form 5630.7) is $.63 per person. Therefore the public cost associated with this IC is $10,495.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
ATF Form 5630.7	16,659	1/annually	16,659	15	4,164

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: July 14, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15411 Filed 7–19–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0012]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on Wednesday, May 10, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Melissa Mason, National Firearms Division, by email at *NFAOMBCOMMENTS@ATF.GOV,* or telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0012. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 2 (5320.2).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Private Sector—business or other for-profit, Federal Government, State, Local or Tribal Government.

Abstract: The Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2) is required of (1) a person who is qualified to manufacture National Firearms Act (NFA) firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s).

5. *Obligation to Respond:* Mandatory. The statutory requirements are implemented in sections 479.101, 479.103, 479.111, and 479.112, Title 27, Code of Federal Regulations.
6. *Total Estimated Number of Respondents:* 2,634.
7. *Estimated Time per Respondent:* 30 minutes.
8. *Frequency:* Approximately 7.68 times annually.
9. *Total Estimated Annual Time Burden:* 10,117 hours.
10. *Total Estimated Annual Other Costs Burden:* The estimated mailing cost is $.63 (postage) per submission. The total number of response submissions is 20,234 for a total cost of $12,747 (20,234 responses × $.63*).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 12, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15350 Filed 7–19–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0016]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on Monday, May 15, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Melissa Mason by email at *Nfaombcomments@atf.gov,* or by telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number: 1140–0016. This information collection request may be

viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5320.10.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: Federal Government, State, local or Tribal government.

Abstract: State and local government agencies will use the Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10) to register an otherwise unregistrable National Firearms Act (NFA). The NFA requires the registration of certain firearms under Federal Law. The Form 10 registration allows State and local agencies to comply with the NFA, and retain and use firearms that would otherwise have to be destroyed.

5. *Obligation to Respond:* Required to obtain or retain benefits under 27 CFR 479.104.

6. *Total Estimated Number of Respondents:* 862 respondents.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 431 hours.

10. *Total Estimated Annual Other Costs Burden:* The cost to the respondent is postage. Therefore, the total cost burden is calculated as follows: 862 (total respondents) * $.63 (current cost for first class postage) = $ 543.06 or $543.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: July 14, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15351 Filed 7–19–23; 8:45 am]

BILLING CODE 4410–14–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 21st Century Museum Professionals Program Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning a plan to offer a new discretionary grant program to support the development and enhancement of a diverse workforce of museum professionals with an initial emphasis on spurring economic growth through workforce development in the post-pandemic environment, particularly for cultural institutions in rural and economically distressed communities.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 18, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at *misaksen@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of the 21st Century Museum Professionals (21MP) Program will be to develop and enhance a

diverse workforce of museum professionals by offering professional development opportunities; employing strategies for training and recruiting future museum professionals; and supporting evaluation efforts to identify and share effective practices. There will be an initial emphasis on spurring economic growth through workforce development in the post-pandemic environment, particularly for cultural institutions in rural and economically distressed communities.

IMLS recognizes the important role of strong local and regional networks as essential tools for providing peer-to-peer learning, training, and mentoring opportunities. The 21MP Program will thus encourage applications from not only museums but also museum associations, museum studies programs at Institutions of Higher Education, and museums that serve as essential parts of the professional learning and training environment.

Agency: Institute of Museum and Library Services.

Title: 21st Century Museum Professionals Program Notice of Funding Opportunity.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: Museums, museum associations, museum studies programs at Institutions of Higher Education, and museums that serve as essential parts of the professional learning and training environment.

Total Estimated Number of Annual Respondents: 40.

Frequency of Response: Once per request.

Average Minutes/Hours per Response: TBD.

Total Estimated Number of Annual Burden Hours: TBD.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: July 14, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–15369 Filed 7–19–23; 8:45 am]

BILLING CODE 7036–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–102; MC2023–183 and CP2023–187; MC2023–184 and CP2023–188; MC2023–185 and CP2023–189; MC2023–186 and CP2023–190]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 24, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2023–102; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 107, Filed Under Seal; *Filing Acceptance Date:* July 14, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 24, 2023.

2. *Docket No(s).:* MC2023–183 and CP2023–187; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 34 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* July 24, 2023.

3. *Docket No(s).:* MC2023–184 and CP2023–188; *Filing Title:* USPS Request to Add USPS Ground Advantage Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 24, 2023.

4. *Docket No(s).:* MC2023–185 and CP2023–189; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 4 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 24, 2023.

5. *Docket No(s).:* MC2023–186 and CP2023–190; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 21 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 24, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–15439 Filed 7–19–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–2]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 21, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2022–2; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 48, Filed Under Seal; *Filing Acceptance Date:* July 13, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* July 21, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–15354 Filed 7–19–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Ground Advantage® Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–184, CP2023–188.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–15365 Filed 7–19–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 4 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2023–185, CP2023–189.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–15366 Filed 7–19–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service & Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 23, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service & Parcel Select Service Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–176, CP2022–180.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–15348 Filed 7–19–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97908; File No. SR–ICC–2023–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

July 14, 2023.

I. Introduction

On March 30, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to clear an additional credit default swap (''CDS'') contract. The proposed rule change was published for comment in the **Federal Register** on April 18, 2023.[3] On May 11, 2023, the Commission designated a longer period for Commission action on the proposed rule change until July 17, 2023.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC's Rulebook covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS (''SES'') contracts.

The purpose of the proposed rule change is to amend ICC's rules to permit ICC to clear an additional SES contract, specifically, SES contracts on the Dominican Republic. To carry out this change, the proposed rule change would amend Subchapter 26D of Chapter 26. In Rule 26D–102 (Definitions), ''Eligible SES Reference Entities,'' the proposed rule change would add the Dominican Republic to the list of specific Eligible SES Reference Entities to be cleared by ICC.

As discussed below, this additional SES contract has terms consistent with the other SES contracts that ICC is already clearing. As such, to clear this additional contract, ICC will be able to rely on its existing Risk Management Framework and other policies and procedures without making any changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[5] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [6] and Rule 17Ad–22(e)(1) thereunder.[7]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[8]

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[9] The Commission has reviewed the terms and conditions of the additional SES contract proposed for clearing and has determined that those terms and conditions are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D of the ICC Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. For the additional SES contract, the underlying reference obligations will be issuances by the Dominican Republic.

After reviewing the Notice and ICC's Rules, policies, and procedures, the Commission also finds that ICC would be able to clear the additional SES contract pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Commission staff also conducted a review of data on volume, open interest, and the number of ICC Clearing Participants (''CPs'') that currently trade in the SES contracts, as well as certain model parameters for the additional contracts. Based on this review, as well as its own experience and expertise, the Commission finds that ICC's Rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional SES contract, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 97293 (Apr. 12, 2023), 88 FR 23711 (Apr. 18, 2023) (File No. SR–ICC–2023–005) (''Notice'').

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 97482 (May 11, 2023), 88 FR 31554 (May 17, 2023) (File No. SR–ICC–2023–005).

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240Ad–22(e)(1).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

resources it needs to provide its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional SES contracts and other credit default swap transactions.

Therefore, the Commission finds that clearance of the additional SES contract would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[11]

The Commission believes that the proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on the Dominican Republic. By amending Rule 26D–102 to add the Dominican Republic to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on the Dominican Republic pursuant to its existing rules in Subchapter 26D. The Commission believes Subchapter 26D would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).[12]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[13] and Rule 17Ad–22(e)(1) thereunder.[14]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[15] that the proposed rule change (SR–ICC–2023–005), be, and hereby is, approved.[16]

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 17 CFR 240.17Ad–22(e)(1).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240Ad–22(e)(1).

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–15355 Filed 7–19–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97909; File No. SR–NYSE–2023–26]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

July 14, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 30, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to provide for an alternate way for member organizations to qualify for the market at-the-close (''MOC'') and limit at-the-close (''LOC'') Tier 3. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend it Price List to provide for an alternate way for member organizations to qualify for the MOC/LOC Tier 3.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct closing orders in NYSE-listed securities by providing an alternate way for member organizations to send additional auction flow that will incentivize member organizations to send closing liquidity to achieve lower fees and encourage greater liquidity at the closing auction.

The Exchange proposes to implement the fee changes effective July 3, 2023.

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[5] Indeed, cash equity trading is

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[9]

In addition, in light of this crowded competitive landscape for order flow, including at the close, the Exchange does not have a monopoly over where closing orders in NYSE-listed securities are executed. Indeed, competition with respect to these orders in NYSE-listed securities is fierce, not only because of the availability of the Cboe Exchange, Inc. (''Cboe'') Market Close, but also, and more relevant, because of the internalization of MOC order flow by some of the largest broker-dealers.[10] In the currently highly competitive national market system, numerous exchanges and other order execution venues compete for order flow intraday as well as at the close, and competition for closing orders is robust.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. With respect to closing order flow, member organizations can choose among multiple options of where to execute such orders. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders in NYSE-listed securities, including at the close, by modifying requirements in order to provide an additional way for member organizations to qualify for a MOC/LOC tier and encourage additional liquidity to the Exchange.

Proposed Rule Change

Currently, for MOC/LOC Tier 3, the Exchange charges $0.0009 per share for MOC orders and $0.0009 per share for LOC orders from any member organization executing in the current billing month (1) an average daily trading volume (''ADV'') of MOC activity on the NYSE of at least 0.20% of NYSE consolidated ADV (''CADV''),[11] (2) an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.30% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close).

The Exchange proposes to modify the third requirement by adding an alternate way for member organizations to qualify for the MOC/LOC Tier 3. As proposed, member organizations that meet the first two requirements would be able to satisfy the third requirement and qualify for the tier if the member organization has either MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close), which is the current requirement, or executes an ADV of D Order executions at the close of at least 30 million shares. The Exchange proposes no changes to the other requirements or to the fees.

The purpose of the proposed change is to increase the ability for order flow providers to send greater marketable and other liquidity at the closing auction. As described above, member organizations with closing orders have a choice of where to send those orders. The Exchange believes that, by offering an alternate way for member organizations to qualify for the fees, more member organizations will choose to route greater marketable and other liquidity to the Exchange at the close.

Currently, a number of member organizations qualify for MOC/LOC Tier 3. The Exchange cannot predict with certainty how many member organizations would avail themselves of the opportunity offered by the proposed change but believes that at least 1–5 member organizations could choose to execute the required volume of D Orders to qualify for the tier based on the additional qualification method.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarket regmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] There are at least seven broker-dealer sponsored products competing for volume at the close, including Credit Suisse's CLOSEX; Instinet's Market-on-Close Cross; Morgan Stanley's Market-on-Close Aggregator (MOCHA); Bank of America's Instinct X® and Global Conditional Cross; JP Morgan's JPB–X; Piper Sandler's On-Close Match Book; and Goldman Sachs' One Delta Close Facility (ODCF).

[11] ADV and CADV are defined in footnote * of the Price List.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Regulation NMS, *supra* note 4, 70 FR at 37499.

organizations during the closing auction. The Exchange's closing auction is a recognized industry benchmark,[15] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that the proposed additional way to qualify for MOC/LOC Tier 3 is a reasonable way to both encourage greater liquidity and achieve the proposed discounts. Higher volumes of closing orders contribute to the quality of the Exchange's closing auction by leading the price discovery process. Closing orders are also a valuable tool for market participants, as any closing order priced more aggressively than the closing auction price would be filled in the auction. In addition, as noted above, in the currently highly competitive national market system, competition for closing orders among exchanges, ATSs and other market execution venues is robust.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed alternate way to qualify for MOC/LOC Tier 3 on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed additional qualification method is an equitable allocation of fees because the proposed change will incentivize member organizations to send additional liquidity to achieve lower fees and encourage greater marketable and other liquidity at the closing auction. Higher volumes of closing orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders participate in the close with a greater opportunity for execution of orders on the Exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that utilize closing orders on the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposed additional way to satisfy the requirements for MOC/LOC Tier 3 is not unfairly discriminatory because the proposal would be applied to all similarly situated member organizations and other market participants, who would all be subject to the same fees, requirements, and discounts on an equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described above and below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for market participants. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''[17]

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that the proposed changes would encourage market participants to direct their closing orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage member organizations to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The current and proposed fees would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

Finally, as previously noted, the Exchange operates in a highly competitive market for closing orders in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more

[15] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[16] 15 U.S.C. 78f(b)(8).

[17] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and non-exchange trading venues that are not subject to the same transparency or statutory standards applicable to exchanges relating to setting fees. Because competitors are free to modify their own fees and credits in response, some without the requirement of making a filing with the Commission, and because market participants may readily adjust their order routing practices, the Exchange believes that any degree to which fee changes in this market may impose any burden on competition would be extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–26. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–26 and should be submitted on or before August 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97914; File No. SR–ICC–2023–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's New Initiatives Approval Policy and Procedural Framework

July 14, 2023.

I. Introduction

On May 12, 2023, ICE Clear Credit LLC (''ICC''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update the ICC New Initiatives Approval Policy and Procedural Framework (''NIA Policy''). The proposed rule change was published for comment in the **Federal Register** on June 1, 2023.[3] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.[4] From time to time, ICC implements new projects. After ICC's Steering Committee [5] approves some projects, ICC's New Initiative Approval Committee (''NIAC'') must then approve them prior to their launch.[6] New Steering Committee-approved projects that must be approved by the NIAC prior to their launch are called New Initiatives.[7] New Initiatives may involve new and material modifications to the risk or pricing methodology; potentially significant changes to the processing system, ICC Clearing Rules, or clearing operating procedures; or Model Changes classified as Materiality A [8] under ICC's Model Validation Framework.[9] The NIA Policy sets forth ICC's policies and procedures for the review and approval of New Initiatives to be offered or implemented by ICC.[10] The NIA Policy is meant to notify all relevant ICC departments of the introduction of the New Initiative, provide for information sharing between departments, ensure prior to the launch of a New Initiative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97586 (May 25, 2023), 88 FR 35934 (June 1, 2023) (File No. SR–ICC–2023–006) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules.

[5] The Steering Committee is an ICC management committee responsible for prioritizing the implementation of initiatives and monitoring and guiding delivery of those initiatives. Notice, 88 FR at 35934.

[6] *Id.*

[7] *Id.*

[8] ICC classifies its Model Changes based on how substantially the Model Change affects the ICC risk management system's assessment of risk for the related risk driver. Model Changes classified as Materiality A have a substantial impact on the risk management system's assessment of risk for a related risk driver. Securities Exchange Act Release No. 85105 (Feb. 11, 2019), 84 FR 4570 n.18 (Feb. 15, 2019) (File No. SR–ICC–2018–011) (''Order'').

[9] *Id.*

[10] Notice, 88 FR at 35934.

that all required governance and regulatory filings have been completed and New Initiative risks are considered, and establish requirements for the pre-launch verification and testing of the New Initiative.[11]

ICC proposes three groups of changes to its NIA Policy. First, ICC proposes edits to a review and approval process described in the NIA Policy. Second, ICC proposes formalizing two existing review and approval processes by formally incorporating them into the NIA Policy. Third, ICC seeks to formalize non-material changes to the NIA Policy that were reviewed and approved by the NIAC in 2019 and 2020.[12]

1. Edits to a Review and Approval Process in the NIA Policy

ICC seeks to edit the review and approval process for New Initiatives. As noted above, New Initiatives are any new projects approved by the Steering Committee and identified by the New Initiative Approval Committee as requiring approval prior to launch.[13] ICC seeks to change the title of the first step of the New Initiatives review and approval process from ''Submission'' to ''Creation.'' In the first step of the New Initiatives review and approval process, the Steering Committee creates a new project proposal and submits it to the NIAC for review. Although the first step of the process remains unchanged, ICC believes that changing the title of the first step from ''Submission'' to ''Creation'' will better describe the first step of the New Initiatives review and approval process.[14]

2. Description of Existing Review and Approval Processes

ICC also proposes describing two existing review and approval processes in its NIA Policy, specifically, the review and approval process for Approvals Matrices and Risk Assessments.

a. Approvals Matrix Review and Approval Process

ICC seeks to describe in the NIA Policy its existing three-step review and approval process for Approvals Matrices. An Approvals Matrix is a document reviewed by the New Initiative Approval Committee that evidences and ensures that all necessary approvals have been obtained and all relevant comments have been addressed.[15] For example, the Approvals Matrix would help ensure that ICC has obtained all necessary regulatory approvals for a New Initiative. ICC is describing in the NIA Policy the existing[16] review and approval process for Approvals Matrices to formalize and describe ICC's procedures regarding the use of an Approvals Matrix in its review and approval of a given New Initiative.[17]

The first step of the Approvals Matrix review and approval process is ''Creation.'' In this step, the NIAC Chair requests an initial draft Approvals Matrix. The NIAC Chair may request an initial draft Approvals Matrix prior to completion of a New Initiative, and in any case prior to ICC being granted all required approvals. Upon this request, the ICC Legal Department prepares the initial draft Approvals Matrix. The Approvals Matrix should include items requiring approval (*e.g.,* ICC Clearing Rules or ICC Procedures); required filings/approvals related to each item (*e.g.,* CFTC, SEC, and ICC Board of Managers); and the date on which approvals were requested, the date on which regulatory filings were filed, and/or the date on which approvals were granted. The list of required approvals included in the Approvals Matrix should be complete. This means that it should include both granted and to-be-granted approvals. Ultimately, the ICC Compliance Department and ICC Risk Oversight Officer both review the initial draft Approvals Matrix, provide their feedback, and confirm that the information captured in the Matrix is accurate.

The second step of the Approvals Matrix review and approval process is ''Review/Maintenance.'' As part of the review and maintenance process, there may be meetings, such as NIAC meetings and a Pre-Launch Verification meeting.[18] The NIAC Chair may include a review of the Approvals Matrix in a NIAC meeting pertaining to the relevant New Initiative, and must include a review of the Approvals Matrix in the relevant Pre-Launch Verification meeting. If the Approvals Matrix must be changed, the ICC Legal Department will make the necessary changes at the request of the NIAC Chair. To indicate which version of the Approvals Matrix is the most current as it moves through the New Initiatives process, the Approvals Matrix will be dated and marked accordingly.

The third step of the Approvals Matrix review and approval process is ''Finalization.'' During this step of the review and approval process, the NIAC Chair confirms with the ICC Legal Department that all required approvals have been received. At the request of the NIAC Chair, the ICC Legal Department must circulate the final Approvals Matrix to the ICC Compliance Department and ICC Risk Oversight Officer. The ICC Legal Department must then provide confirmation to the NIAC Chair that the ICC Compliance Department and the ICC Risk Oversight Officer have reviewed the Approvals Matrix.

b. Risk Assessment Review and Approval Process

ICC also seeks to describe in the NIA Policy its existing three-step review and approval process for Risk Assessments. A Risk Assessment is a document reviewed by the NIAC that describes key risks identified by the ICC Functional Area Heads[19] and includes mitigation plans, residual impact ratings, and other comments.[20] ICC proposes describing the review and approval process for Risk Assessments in the NIA Policy to formalize ICC's current[21] New Initiatives risk review and approval process.[22]

The first step of the Risk Assessment review and approval process is ''Creation.'' This section of the Risk Assessment review and approval process provides detailed instructions with respect to how the initial draft Risk Assessment should be created and reviewed. It requires the NIAC Chair to request that the ICC President, General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer, and Head of ICC Technology all perform initial risk assessments and document these assessments in the Risk Assessment document. Once the ICC

[11] *Id.*

[12] *Id.* at 35935.

[13] *Id.* at 35934.

[14] *Id.* at 35935.

[15] New Initiatives Approval Policy and Procedural Framework, Section II.A.

[16] ICC's current NIA Policy defines Approvals Matrix. It also includes a template for the Approvals Matrix and discusses aspects of the Approvals Matrix review and approval process, for example it identifies certain persons responsible for review of the Approvals Matrix. New Initiatives Approval Policy and Procedural Framework.

[17] Notice, 88 FR at 35934.

[18] Pre-Launch Verification meetings are meant to allow for review of the applicable Approvals Matrix, the risk assessments, and any post-launch stipulations in advance of the approval of the New Initiative. *Id.* at 35935 n.3.

[19] Some examples of ICC Functional Area Heads include the General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer, and Head of ICC Technology. *Id.* at 35935 n.5.

[20] *Id.* at 35935 n.4.

[21] ICC's current NIA Policy defines Risk Assessment. It also includes a template for the Risk Assessment and discusses aspects of the Risk Assessment review and approval process, for example it identifies certain persons responsible for review of the Risk Assessment. New Initiatives Approval Policy and Procedural Framework.

[22] Notice, 88 FR at 35935.

President and Functional Area Heads complete and document their assessments, all Functional Area Heads must provide their section of the initial draft Risk Assessment to the NIAC Chair. At that point, it is the NIAC Chair's responsibility to compile the sections received from the Functional Area Heads into a single initial draft Risk Assessment and circulate that Risk Assessment to all Functional Area Heads for their review. As they review the initial draft Risk Assessment, Functional Area Heads should each provide a residual risk rating for each identified risk in the initial draft Risk Assessment. This review and residual risk rating of each identified risk may be completed during an NIAC meeting, at the discretion of the NIAC Chair. The final version of the initial draft Risk Assessment will be circulated to all Functional Area Heads by the NIAC Chair.

The proposed ''Creation'' portion of the Risk Assessment review and approval process, in the NIA Policy, also specifies the content of the initial draft Risk Assessment. Under the proposed change, when completing the Risk Assessment, each Functional Area Head should consider the key risks for their functional area. Functional Area Heads should also document in the Risk Assessment their view of the main risks and any related mitigations. The documentation of the main risks includes: a description of the risk, a description of any expected/implemented risk mitigations, and a high/medium/low rating of the residual risk after considering the expected/implemented risk mitigations. Each Functional Area Head should include reference to any work logs or other supporting materials used by the Functional Area Head when performing the Risk Assessment. In the event that an initial draft Risk Assessment is requested prior to the completion of a New Initiative, it should reflect the information available at that time related to the risks and/or expected risks associated with the New Initiative.

The second step of the Risk Assessment review and approval process is ''Review/Maintenance'' of the Risk Assessment. During the ''Review/Maintenance'' portion of the Risk Assessment review and approval process, Functional Area Heads may change their risk ratings as mitigation plans evolve to eliminate or reduce risk. The Pre-Launch Verification meeting must include a review of the Risk Assessment. At the discretion of the NIAC Chair, NIAC meetings related to a New Initiative may include a review of the Risk Assessment. During this step, the NIAC Chair also coordinates the post-review update and recirculation of the Risk Assessment to the Functional Area Heads and marks the Risk Assessment to indicate which version of the document is most current.

The third step of the Risk Assessment review and approval process is ''Finalization'' of the Risk Assessment. At the Pre-Launch Verification NIAC meeting, the NIAC reviews the latest version of the Risk Assessment and residual risk ratings. The NIAC Chair is made aware of any further revisions to the Risk Assessment prior to the NIAC voting to approve the New Initiative. The NIAC Chair sends the final Risk Assessment to the NIAC after the Pre-Launch Verification NIAC meeting. Ultimately, the Functional Area Heads provide their sign-off on the final Risk Assessment via email to the NIAC Chair.

3. 2019 and 2020 Non-Material Updates

ICC seeks to formalize changes to the NIA Policy, reviewed and approved by the NIAC in 2019 and 2020, that ICC deems non-material. These changes were made to reflect changes in ICC's officer positions and titles.[23]

In 2019, ICC made changes to the positions comprising the NIAC and the NIAC's leadership. Section II.G describes and identifies who is on the NIAC and who chairs it. It previously listed the Senior Director, Products and Services and Head of Special Projects as members of the NIAC, and identified the Head of Special Projects as the NIAC Chair. The changes delete these positions from the NIAC as they no longer exist. ICC also adds text to Section II.G to reflect that any member of the NIAC may now be the NIAC Chair. The term NIAC Chair is defined in Section II.H. Since the Head of Special Projects can no longer be the NIAC Chair because that position title no longer exists at ICC, ICC has changed the definition of NIAC Chair to ''the individual designated to serve as Chair of the New Initiative Approval Committee by ICC management.'' Additional references to either the Head of Special Projects, its role as the NIAC Chair or both have been deleted in Section III.B, Attachment C, and Attachment F of the NIA Policy as well.

In 2020, ICC made additional changes to the NIA Policy related to the 2019 changes. Attachment D of the NIA Policy contains the NIAC Charter. ICC added text to Attachment D making it clear that ICC Management designates one of the NIAC members to serve as the NIAC Chair. Additionally, references to the Head of Special Projects have been removed from Exhibit A of Attachment D. Specifically, Exhibit A of Attachment D no longer lists the Head of Special Projects as the NIAC Chair and indicates that the Chair of the NIAC, rather than the Head of Special Projects, may designate who will serve as Committee Secretary.

[23] *Id.* at 35935.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[24] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[25] and Rules 17Ad–22(e)(2)[26] and (e)(17).[27]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICC's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible . . . and, in general, to protect investors and the public interest . . . .''[28] Based on its review of the record, and for the reasons discussed below, the Commission believes that ICC's proposed rule change is consistent with Section 17A(b)(3)(F) because it helps ensure that New Initiatives are clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.

The Commission has stated that New Initiatives may pose operational or other risks to ICC if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.[29] The proposed changes to the NIA Policy make the NIA Policy clearer. For example, ICC seeks to better describe the steps of the review and approval process for New Initiatives with its edits to the existing New Initiatives review and approval process. ICC's description of a review and approval process for Approvals Matrices and Risk

[24] 15 U.S.C. 78s(b)(2)(C).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240Ad–22(e)(2).

[27] 17 CFR 240Ad–22(e)(17).

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] Order, 84 FR at 4570.

Assessments clarifies a process through which ICC ensures that it obtains all necessary approvals and identifies and addresses all relevant risks with respect to a New Initiative. By incorporating the 2019 and 2020 revisions into the NIA Policy, ICC helps ensure that the NIA Policy is accurate in that it reflects current NIAC membership, persons eligible for NIAC positions, and the persons responsible for naming others to specific NIAC positions. Because the proposed changes make the NIA Policy clearer, they should allow the policy to be applied consistently as well. As such, the proposed revisions should enhance ICC's ability to manage risks and avoid potential disruptions to operations related to New Initiatives. This enhances ICC's ability to ensure the prompt and accurate clearance and settlement of securities transactions which also helps ICC assure the safeguarding of securities and funds which are in its custody and control, or for which it is responsible.

The Commission believes, therefore, that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[30]

B. Consistency with Rule 17Ad–22(e)(2)(i) and (v)

Rule 17Ad–22(e)(2)(i) and (v) require ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.[31] The proposed rule change identifies who is eligible to serve as NIAC Chair, which makes the lines of responsibility described in the NIA Policy clearer. As such, ICC's governance arrangements are made clearer and more transparent overall as a result of the proposed rule change. The proposed rule change also identifies who designates the NIAC Chair and Committee Secretary and identifies individuals responsible for tasks in each step of the review and approval process for Approvals Matrices and Risk Assessments. Including a description of these responsibilities in the NIA Policy helps ensure that clear and transparent information is available regarding roles and responsibilities related to New Initiatives. Thus, the Commission believes, that the proposed rule change is consistent with the requirements of Rules 17Ad–22(e)(2)(i) and (v) of the Act.[32]

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(2).

[32] 17 CFR 240.17Ad–22(e)(2).

C. Consistency With Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls.[33] Operational risk refers to the likelihood that deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters, would adversely affect the functioning of a clearing agency.[34] As noted above, New Initiatives may pose operational or other risks to ICC if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.[35] The proposed rule change describes a standardized method for creating, reviewing, and finalizing Approvals Matrices and Risk Assessments. In doing so it helps ensure that New Initiatives are clearly and consistently identified, reviewed, and approved. The proposed rule change thereby identifies and aids in mitigating a plausible source of operational risk. Thus, the Commission believes, that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(17) of the Act.[36]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[37] and Rules 17Ad–22(e)(2)[38] and (e)(17) thereunder.[39]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICC–2023–006) be, and hereby is, approved.[40]

[33] 17 CFR 240.17Ad–22(e)(17).

[34] Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70837 (Oct. 13, 2016) (File No. S7–03–14).

[35] Order, 84 FR at 4570.

[36] 17 CFR 240.17Ad–22(e)(17).

[37] 15 U.S.C. 78q–1(b)(3)(F).

[38] 17 CFR 240.17Ad–22(e)(2).

[39] 17 CFR 240.17Ad–22(e)(17).

[40] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–15357 Filed 7–19–23; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18016 and #18017; Vermont Disaster Number VT–00046]

Presidential Declaration of a Major Disaster for the State of Vermont

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 Vermont (FEMA–4720–DR), dated 07/14/2023.

Incident: Severe Storms and Flooding.

Incident Period: 07/07/2023 and continuing.

DATES: Issued on 07/14/2023.

Physical Loan Application Deadline Date: 09/12/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2024.

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 07/14/2023, 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): Chittenden, Lamoille, Rutland, Washington, Windham, Windsor.

Contiguous Counties (Economic Injury Loans Only):

Vermont: Addison, Bennington, Caledonia, Franklin, Grand Isle, Orange, Orleans.

Massachusetts: Franklin.

New Hampshire: Cheshire, Grafton, Sullivan.

New York: Clinton, Essex, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
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 18016 6 and for economic injury is 18017 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15359 Filed 7–19–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17994 and #17995 NORTHERN MARIANA ISLANDS Disaster Number MP–00014]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of the Northern Mariana Islands

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 Commonwealth of the NORTHERN MARIANA ISLANDS (FEMA–4716–DR), dated 07/10/2023.

Typhoon Mawar.

Incident Period: 05/22/2023 through 05/29/2023.

DATES: Issued on 07/10/2023.

Physical Loan Application Deadline Date: 09/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/10/2024.

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 07/10/2023, 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 Areas:

Rota, Saipan, Tinian

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 17994 8 and for economic injury is 17995 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15362 Filed 7–19–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; California Disaster Number CA–00376]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment 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 through 07/10/2023.

DATES: Issued on 07/14/2023.

Physical Loan Application Deadline Date: 07/20/2023.

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: The notice of the President's major disaster declaration for the State of California, dated 04/03/2023, is hereby amended to establish the incident period for this disaster as beginning 02/21/2023 through 07/10/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15394 Filed 7–19–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Tuesday, September 5, 2023, at 4p.m. CDT/5p.m. EDT.

ADDRESSES: Meeting will be in-person at the Gaylord Opryland Resort and Convention Center, Nashville, TN and via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov;* 202–619–1816.

If anyone wishes to be a listening participant or would like to request

accommodations, please contact Rachel Karton at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section l0(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to conduct Board leadership elections and discuss the following pertaining to the SBDC Program:

- Outreach and Engagement with the SBDC State Directors
- Annual Plan

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2023–15413 Filed 7–19–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; CALIFORNIA Disaster Number CA–00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment 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 through 07/10/2023.

DATES: Issued on 07/17/2023.

Physical Loan Application Deadline Date: 06/05/2023.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to establish the incident period for this disaster as beginning 02/21/2023 through 07/10/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15398 Filed 7–19–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Advisory Council; Public Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation, Maritime Administration announces a meeting of the U.S. Merchant Marine Academy (USMMA) Advisory Council (Council).

DATES: The meeting will be held on Monday, Aug 7, 2023, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received no later than 5:00 p.m. EDT on Monday, July 31, 2023, in order to facilitate entry. Requests to submit written materials to be reviewed during the meeting must be received no later than July 26, 2023. Requests for accommodations for a disability must be received by July 28, 2023.

ADDRESSES: The meeting will be held in-person at the USMMA. Meeting access information will be available no later than Aug 3, 2023. Information on who the committee members are can be found in the U.S. Maritime Administration's Press release: *https://www.maritime.dot.gov/newsroom/secretary-buttigieg-appoints-members-us-merchant-marine-academy-advisory-council.*

FOR FURTHER INFORMATION CONTACT: The Council's Designated Federal Officer and Point of Contact, Will Sheehan, 202–366–4105 or *will.sheehan@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Council is established pursuant to 46 U.S.C. 51323. The Council operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2.

The objective and scope of the Council is to provide independent advice and recommendations to the Secretary of Transportation (Secretary) on matters relating to the USMMA including in the areas of curriculum development and training programs; diversity, equity, and inclusion; sexual assault prevention and response; infrastructure maintenance and redevelopment; midshipmen health and welfare; governance and administrative policies; and other matters.

II. Agenda

The meeting agenda will cover the following proposed topics:

1. Welcome, opening remarks, and introductions.
2. Academy Operations Program Overview (Instructional Program, Midshipman Program, Office of Admissions, and other administrative and support functions).
3. Capital Asset Management Program Overview (Capital Improvement Projects, Facilities Maintenance, Repairs and Equipment, and tour of Academy grounds).
4. Discussions on problem sets and recommendations (*e.g.,* the November 2021 National Academy of Public Administration's report entitled, ''Organizational Assessment of the U.S. Merchant Marine Academy: A Path Forward.'').
5. Administrative items.
6. Public comment.

III. Public Participation

This meeting is open to the public and will be held in-person at the United States Merchant Marine Academy. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Seating will be limited and available on a first-come-first-serve basis.

Any member of the public is permitted to file a written statement with the Council. Written statements should be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section no later than July 26, 2023.

Only written statements will be considered by the Council; no member of the public will be allowed to present questions or speak during the meeting unless requested to do so by a member of the Council.

(Authority: 46 U.S.C. 51323; 5 U.S.C. 552b; 5 U.S.C. app. 2; 41 CFR parts 102–3.140 through 102–3.165.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–15384 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2018–0088]

Centers of Excellence for Domestic Maritime Workforce Training and Education; Designation Policy Update and Notice of Opportunity To Apply for Designation for 2023

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice updates the Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE) designation policy and invites eligible and qualified training entities to apply to the Maritime Administration (MARAD) for designation as a 2023 CoE. CoE designations serve to assist the maritime industry in obtaining and maintaining the highest quality workforce. On December 23, 2022, Congress passed the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY 2023 NDAA), which changed the eligibility criteria for CoE designations by amending the definition of ''covered training entity'' (see Key Terms). As a result, MARAD has terminated action on all 2022 applications which were based on eligibility criteria no longer valid under the new law.

DATES: Applications, including all supporting information and documents, must be submitted by 8:00 p.m. E.T. on September 18, 2023.

ADDRESSES: Applications, including all supporting information and documents, must be submitted via electronic mail to *CoEDMWTE@dot.gov.* The original application letter, including one copy of all supporting information and documents, may also be submitted by mail addressed to U.S. Department of Transportation, Maritime Administration, Deputy Associate Administrator for Maritime Education and Training, Attention: CoE Designation Program, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gerard Wall, Centers of Excellence for Domestic Maritime Workforce Training and Education (CoE) Program Manager, via electronic mail at *gerard.wall@dot.gov* or call 202–366–7273.

SUPPLEMENTARY INFORMATION: Section 3507 of the FY 2018 NDAA provided authority to the Secretary to designate eligible and qualified entities as CoEs. This authority is codified at 46 U.S.C. 51706. Following the enactment of the FY 2018 NDAA, MARAD developed a procedure to recommend to the Secretary the designation of eligible institutions as CoEs. Section 3532 of the FY 2023 NDAA, enacted on December 23, 2022, changed eligibility criteria for CoE designations by amending the definition of ''covered training entity.'' MARAD has revised its CoE designation procedure to conform to the amended CoE eligibility criteria in the FY 2023 NDAA.

Previously, the definition of ''covered training entity'' was restricted to institutions specifically identifying as a ''Community or Technical College'' or ''Maritime Training Center.'' The FY 2023 NDAA replaced those terms with new categories that include postsecondary education entities, apprenticeship sponsors, and structured experiential learning training programs.

46 U.S.C. 51706(c)(1)(B), provides that a ''covered training entity'' includes (i) a postsecondary educational institution; (ii) a postsecondary vocational institution; (iii) a public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; (iv) an entity sponsoring a registered apprenticeship program; or (v) a maritime training center designated prior to the date of enactment of the FY 2023 NDAA. As reflected in the definition of ''covered training entity'' in the Key Terms section of this notice, to be eligible for a 2023 CoE designation, an entity must meet one of the eligibility criteria under clauses (i) through (v) of 46 U.S.C. 51706(C)(1)(B).

Qualified training entities seeking to be designated as CoEs should apply to MARAD. MARAD has developed the new policy to provide interested parties with comprehensive agency guidance on how to apply for CoE designation and how the CoE program will be administered. Applications should include information to demonstrate that the applicant institution meets certain eligibility requirements, selection criteria, and qualitative attributes consistent with section 3532 of the FY 2023 NDAA.

The MARAD application procedure and program details are listed below and are also available to the public on its website at *https://www.maritime.dot.gov/education/maritime-centers-excellence.*

Eligible entities who submitted applications in response to the previous MARAD notice in the **Federal Register** (87 FR 43103) on July 19, 2022, must resubmit their applications, including a new letter from the Chief Executive indicating which of the revised eligibility categories best reflects the nature of their institution and a statement explaining how they qualify under that applicable eligibility category. Such applicants may resubmit supporting documents and data from 2022 unless there are substantive changes to the previously submitted information in which case an updated version is to be submitted with the 2023 application.

Prior Federal Action

Multiple Federal Register Notices were published between May 2018 and March 2020 seeking and responding to public comment on the proposed CoE designation policy. All unabridged comments are available for review electronically at *www.regulations.gov* by searching DOT Docket ''MARAD–2018–0088'' or by visiting the DOT Docket, Room PL–401, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal Holidays.

On March 06, 2020, MARAD published its final CoE designation policy in the **Federal Register** (85 FR 13231). Subsequently, MARAD issued a notice in the **Federal Register** (85 FR 67599) on October 23, 2020, entitled Center of Excellence for Domestic Maritime Workforce: Notice of Opportunity to Apply for Training and Education Designation, and on the MARAD website at *www.MARAD.dot.gov,* requesting applications from qualified training entities seeking to be designated as a CoE. The application period closed on December 22, 2020. Thirty applications for designation were received. Upon the Secretary's approval, twenty-seven institutions were designated on May 19, 2021, as 2021 CoEs.

On July 19, 2022, MARAD issued a notice in the **Federal Register** (87 FR 43103), entitled Center of Excellence for Domestic Maritime Workforce: Notice of Opportunity to Apply for Training and Education Designation, and on the MARAD website at *www.MARAD.dot.gov,* to solicit

applications from eligible and qualified training entities for the next round of CoE designations for 2022. The application period closed on September 19, 2022. Thirty-six applications for designation were received. However, before MARAD could complete final agency action on these applications, Congress enacted the FY 2023 NDAA, which amended the CoE designation eligibility criteria. Because of these changes to the eligibility criteria, MARAD has terminated action on the 2022 applications which were based on eligibility criteria no longer valid under current law.

MARAD has updated its CoE designation policy to conform to the FY 2023 NDAA. The purpose of this notice is to announce termination of agency action on the 2022 applications, issue an updated CoE designation policy conforming to the FY 2023 NDAA, and solicit applications from eligible and qualified training entities under the FY 2023 NDAA for 2023 CoE designations.

Applicant Assistance

To assist applicants to be designated as a CoE please find below MARAD's policy to include recommendations on how best to apply.

MARAD Center of Excellence for Domestic Maritime Workforce Training and Education Designation Policy

This policy describes the process through which MARAD will exercise its discretionary authority to designate CoEs in accordance with the FY 2023 NDAA.

How To Be Designated a Center of Excellence for Domestic Maritime Workforce Training and Education

Introduction

The Secretary of Transportation, acting through the Maritime Administrator, may designate certain eligible and qualified training entities as CoEs. MARAD has developed the CoE Program to provide interested parties with comprehensive agency guidance on how best to apply for CoE designation. However, conformity with this CoE applicant guidance, except where explicit in the statute, is voluntary only. MARAD will review and consider all applications it receives and may contact applicants with questions to assist in reviewing their applications. The CoE Program is a voluntary program. Each eligible and qualified training entity is free to decide whether it wishes to participate in the program and apply for a CoE designation. Applications should include information to demonstrate that the applicant institution meets certain eligibility criteria, designation requirements, and attributes consistent with 46 U.S.C. 51706.

Key Terms

The following list of key terms are either directly taken from the statute or have been developed by MARAD or from comments received from the public during our earlier notice and comment period. The list is intended to assist applicants by providing context and insight into the approval process. If you believe that your institution qualifies for CoE designee status under an alternate interpretation or by qualifications not otherwise explicitly stated in the statute, your application should include a cogent justification for any such alternative qualification, and it will be given due consideration during our review.

1. ''Afloat career'' is a term developed by MARAD to mean a career as a merchant mariner compensated for service aboard a vessel in the U.S. Maritime Industry.

2. ''Ashore career'' is a term developed by MARAD to mean a shore-based compensated occupation in the United States Maritime Industry.

3. ''Covered training entity'' means an entity that—

(A) is located in a State that borders on the—

(i) Gulf of Mexico;
(ii) Atlantic Ocean;
(iii) Long Island Sound;
(iv) Pacific Ocean;
(v) Great Lakes; or
(vi) Mississippi River System.

(B) is—

i. a postsecondary educational institution (as such term is defined in section 3(39) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302));

ii. a postsecondary vocational institution (as such term is defined in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c));

iii. a public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; or

iv. an entity sponsoring an apprenticeship program registered with the Office of Apprenticeship of the Employment and Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act'; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);

v. a maritime training center designated prior to the date of enactment of the FY 2023 NDAA; and

(C) has a demonstrated record of success in maritime workforce training and education.

4. ''Mississippi River System'' is interpreted by MARAD to mean the mostly riverine network of the United States which includes the Mississippi River, and all connecting waterways, natural tributaries and distributaries. The system includes the Arkansas, Illinois, Missouri, Ohio, Red, Allegheny, Tennessee, Wabash and Atchafalaya rivers. Important connecting waterways include the Illinois Waterway, the Tennessee-Tombigbee Waterway, and the Gulf Intracoastal Waterway.

5. ''Postsecondary educational institution'' means—

(A) an institution of higher education, as defined in 20 U.S.C. 1001, that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor's degree;

(B) a tribally controlled college or university; or

(C) a nonprofit educational institution offering certificate or other skilled training programs at the postsecondary level;

6. ''Postsecondary vocational institution'' means a postsecondary vocational institution as defined in 20 U.S.C. 1002(c).

7. ''State'' is interpreted by MARAD to mean a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

8. ''Training program means a program that provides training services, as described in 29 U.S.C. 3174(c)(3)(D).

9. ''United States maritime industry'' (as such term is defined in 46 U.S.C. 51706(c)(6)) means the design, construction, repair, operation, manning, and supply of vessels in all segments of the maritime transportation system of the United States, including:

(A) the domestic and foreign trade;

(B) the coastal, offshore, and inland trade;

(C) non-commercial maritime activities, including –

(i) recreational boating; and

(ii) oceanographic and limnological research as described in 46 U.S.C. 2101(24).

Applicant Information

Note: Any entity that applied in 2022 under the **Federal Register** Notice published 7/19/2022, entitled *Center of Excellence for Domestic Maritime Workforce; Notice of Opportunity to Apply for Maritime Training and Education Designation* that would like to be considered for CoE designation must resubmit their application package. Resubmitted packages must include a new letter from the Chief Executive indicating which of the revised eligibility categories best reflects the nature of their institution and a statement explaining how they qualify under that applicable eligibility category. Such applicants may resubmit supporting documents and data from 2022 unless there are substantive changes to the previously submitted information in which case an updated version is to be submitted with the 2023 application.

1. Who is eligible to apply for designation as a Center of Excellence for Domestic Maritime Workforce Training and Education (CoE)?

Participation in the CoE program is entirely voluntary for a covered training entity. A covered training entity is not required to seek a CoE designation. Under the statute, a covered training entity that provides training and education for the domestic maritime workforce is eligible to apply so long as it meets the following criteria:

a. The entity is located in a State that borders on at least one of the following bodies of water:

1. Gulf of Mexico;
2. Atlantic Ocean;
3. Long Island Sound;
4. Pacific Ocean;
5. Great Lakes; or
6. Mississippi River System.

b. The entity has a demonstrated record of success in maritime workforce training and education; and

c. The entity is:

1. A postsecondary educational institution; or

2. A postsecondary vocational institution; or

3. A public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; or

4. An entity sponsoring an apprenticeship program registered with the Office of Apprenticeship of the Employment and Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act'; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*).; or

5. a maritime training center designated prior to the date of enactment of the FY 2023 NDAA; or

6. A group of covered training entities that:

i. Consists only of members that meet the eligibility criteria at (1)(a), 1(b) and one of the eligibility criteria listed at(1)(c)(1) through (1)(c)(4), and the selection criteria under (2);

ii. Names a member of such group as a lead entity. The lead entity will serve as the primary point of contact with MARAD and will be responsible for all duties, including administrative, legal and financial, as related to the CoE designation. For example, the lead entity is responsible for submitting the CoE application, responding to any inquiries from MARAD, and coordinating and executing any cooperative agreements with MARAD; and

iii. Has a legally binding agreement signed by all members. That agreement must include the name of the group, which will receive the CoE designation if one is granted and list the lead entity and its responsibilities consistent with (ii) of this section.

2. How does MARAD interpret the selection criteria for CoE designation?

I. Although CoE designations may result from MARAD review of alternative qualifications, applicants will be considered eligible if they can demonstrate compliance with all the following criteria:

a. The academic programs offered by the entity include:

1. One or more afloat career preparation tracks in the United States Maritime Industry, and/or

2. One or more ashore career preparation tracks in the United States Maritime Industry.

b. Applicant institutions offering afloat career and/or ashore career tracks have been accredited as follows:

1. A postsecondary educational institution must hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.

2. A postsecondary vocational institution must hold current accreditation of the institution from a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education.

3. A public or private non-profit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry—

i. must have United States Coast Guard (USCG) approval of the mariner training program and mariner training courses offered by the institution, if applicable; or

ii. must hold current accreditation of the maritime training program offered by the institution from one or more of the following:

A. the State's Department of Education or equivalent State agency; or

B. employers in the United States maritime industry; or

C. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.

4. An entity sponsoring a registered apprenticeship program must hold current accreditation from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29.

c. As applicable, the applicant maintains USCG approval for the merchant mariner training program and/or merchant mariner training course(s) offered by the institution.

d. The applicant provides data and statistics to demonstrate record of success in maritime workforce training and education and institutional and/or program effectiveness. This should include, but is not limited to, recruitment data, past/current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.

e. As applicable, the applicant maintains authorization and/or endorsement of the program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect professional

recognition of the level of educational or technical skill achievement.

II. Additional factors to be considered include the following qualitative attributes fostered by the institution:

a. Supporting workforce needs of the local, state, or regional economy;

b. Building Science, Technology, Engineering, and Math (STEM) competencies of local/future workforce through maritime programs to meet emerging local, regional, and national economic interests;

c. Promoting diversity, equity, inclusion, and accessibility within the institution, including among the student body, faculty, and staff;

d. Offering a broad-based curriculum and stackable credentials where applicable;

e. Engaging and/or collaborating with the maritime industry including, but not limited to employers, associations, and other industry organizations or partners;

f. Engaging and/or collaborating with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act section 3(26);

g. Engaging and/or collaborating with local and regional maritime high schools or other high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs;

h. Engaging and/or collaborating with maritime academies as appropriate and other applicable institutions or organizations for advanced proficiency and higher education; and

i. Conducting other significant domestic maritime workforce development related activities.

Implementation and Administration

MARAD will evaluate the applicant's supporting documentation and either approve or disapprove the request for designation. During the evaluation of the application and the supporting documentation, MARAD may request clarifications or additional information from the applicant. Upon approval, the Maritime Administrator or his/her designee will make a designation. MARAD will thereafter publish the CoE's name and contact information on its website.

3. When and where should I submit my application for designation?

a. MARAD will publish notifications in the **Federal Register** and on its website indicating the application period for the next designation cycle. Anticipated time frame for application invitation announcement is early spring, with application submission expected within 60 days of announcement. Applicants will be provided 60 days to prepare and submit their applications.

b. An eligible training entity seeking designation as a CoE may submit applications, including all supporting information and documents, by email to *CoEDMWTE@dot.gov* or by mail addressed as follows: Department of Transportation, Maritime Administration, Deputy Associate Administrator for Maritime Education and Training, Attention: CoE Designation Program, 1200 New Jersey Ave. SE, Washington, DC 20590.

4. How will I know the outcome of my designation request application?

MARAD will notify each applicant of the status of their designation request. During the evaluation period, MARAD may request clarification or additional information from the applicant.

5. Does my CoE designation expire?

Yes. CoE designation is valid only for the year in which the designation is made and is identified by designation year (*e.g.,* X has been designated a Center of Excellence for Domestic Maritime Workforce Training and Education for 2023). Successful applicants from one designation cycle are encouraged to reapply during any subsequent designation cycle.

How To Apply for a CoE Designation

6. What should be included in my CoE Designation Application?

Special Instructions: To assist MARAD in its review of your application and to ensure that your application is identified as complete, your institution should provide only concise and relevant information and supporting documentation to adequately demonstrate your eligibility and compliance with the statutory designation criteria. To that end, MARAD encourages applicants ensure that each responsive section and each page of any document or enclosure in their application clearly references the question number(s) and section(s) listed in this guidance and/or the statute. See the below examples:

Example 1. ''*Mar Ex*'' *is eligible for the CoE program as a Postsecondary Educational Institution. (Q3i). Please find enclosed our Articles of Incorporation, Certificate of Status, and State authorization validation document. (Q3, a, b, c)*

Example 2. ''*Mar Ex*'' *is enclosing the following supporting documents to demonstrate that our entity is accredited: U.S. Department of Education Accrediting Agency XYZ accreditation (Q5, Section a,i); and our Afloat Track program and courses are approved by the USCG (Q5, Section a,ii).*

Note: MARAD will host two (2) ''Center of Excellence Application'' sessions to provide guidance to prospective applicants on the content of this **Federal Register** notice. The dates and times of those sessions will be announced on the MARAD CoE homepage within forty-eight (48) hours of the publication of the Notice of Opportunity to Apply. Attendance at either of those information sessions is entirely voluntary and not a requirement of the application process.

Information To Include in Your Application

All submitted documents should clearly reference the question number(s) and section(s) listed in this guidance and/or the statute.

1. Letter applying for CoE designation from the Chief Executive of the applicant institution.

2. Applicant contact information:

a. Legal name of applicant institution and address.

b. Chief executive's name, position title, address, phone number(s) and email.

c. Points of contact (POC) name(s), position titles, phone number(s), emails.

3. Indicate the eligibility category under which the applicant entity is claiming eligibility for the CoE program:

i. 1(c)(1) Postsecondary Educational Institution; or

ii. 1(c)(2) Postsecondary Vocational Institution; or

iii. 1(c)(3) Public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry; or

iv. 1(c)(4) Entity sponsoring a registered apprenticeship program; or

v. 1(c)(5) A maritime training center designated prior to the date of enactment of the FY 2023 NDAA; or

vi. 1(c)(6) A Group of covered training entities.

4. Submit the following supporting information and documents:

a. Charter, Articles of Incorporation, Certificate of Incorporation, or equivalent.

b. Certificate of Status (also known as Certificate of Existence or Certificate of Good Standing), a document issued by a State official (usually the Secretary of State), if applicable.

c. State authorization validation documents, if applicable.

d. Public or Non-Profit status certification.

e. Accreditation approval letter(s) from an accrediting agency(ies), if applicable.

f. Approval letter from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29, if applicable.

g. Approval letter from the State's Department of Education or equivalent State agency, if applicable.

h. Approval letter from the United States Coast Guard (USCG), if applicable.

i. ISO 9001 or other quality management certification, if applicable.

j. Data and statistics to demonstrate record of success in maritime workforce training and education and institutional effectiveness. This should include, but not be limited to, recruitment data, past/current enrollment (trends), attrition rates, student program completion data, post-program job and placement statistics (to the extent available to the institution), and program effectiveness feedback from students, faculty, alumni, and other stakeholders.

Note: This information corresponds to the types of data commonly collected annually as part of a higher education institution's Performance Accountability Report (PAR).

4. Indicate the total number of afloat career preparation tracks and/or the total number of ashore career preparation tracks your institution offers in the United States Maritime Industry and submit the following supporting information:

a. Program summary;

b. A description of applicable courses offered (only relevant maritime related program-specific pages from the catalogue);

c. If applicable, letters of authorization and/or endorsement of the course/program and/or course(s) by an applicable professional society or industry body (including, but not limited to Welding, Electrician, Electronics, Maritime Construction, Maritime Logistics, Maritime Systems, etc.) to issue industry accepted certifications that reflect a professionally recognized level of educational or technical skill achievement; and

d. Any other relevant supporting documentation.

Note: Applicant institutions offering both ashore and afloat career tracks should submit supporting information for both tracks.

5. Applicant institutions offering afloat career and/or ashore career tracks should demonstrate that they have satisfied accreditation requirements, as set forth below:

a. Postsecondary educational institutions and postsecondary vocational institutions—

i. are accredited by a Regional Accreditation Agency or a Nationally Recognized Agency on the list of Accrediting Agencies approved by the U.S. Department of Education; and

ii. if applicable, the mariner training program and mariner training courses offered by the institution have USCG approval.

b. A public or private nonprofit entity that offers one or more other structured experiential learning training programs for United States workers in the United States maritime industry, including a program that is offered by a labor organization or conducted in partnership with a nonprofit organization or one or more employers in the United States maritime industry that—

i. has United States Coast Guard (USCG) approval of the mariner training program and mariner training courses offered by the institution, if applicable; or

ii. holds current accreditation of the maritime training program offered by the institution from one or more of the following:

A. the State's Department of Education or equivalent State agency; or

B. employers in the United States maritime industry; or

C. other appropriate external review body which is specifically authorized to review and validate post-secondary education programs and is acceptable to MARAD.

c. An entity sponsoring a registered apprenticeship program holds current accreditation from a State Apprenticeship Agency (SAA) in accordance with 29 CFR part 29.

d. A maritime training center designated prior to the date of enactment of the FY 2023 NDAA.

6. All applicant institutions should submit a brief narrative statement* for one or more qualitative attributes fostered by the institution to accomplish the following:

a. Support the workforce needs of the local, state, or regional economy;

b. Build the STEM (Science, Technology, Engineering, and Math) competencies of local/future workforce to meet emerging local, regional, and national economic interests;

c. Promote diversity, equity, inclusion, and accessibility within the institution, including among the student body, faculty, and staff;

d. Offer a broad-based curriculum and stackable credentials, where applicable;

e. Engage and/or collaborate with the maritime industry, including, but not limited to employers, associations, and other industry organizations or partners;

f. Engage and/or collaborate with employer-led maritime training practices and programs through Sector Partnerships as authorized in the 2014 Workforce Innovation and Opportunity Act section 3(26);

g. Engage and/or collaborate with local and regional maritime high schools with maritime, maritime related, Career Technical Education (CTE) or STEM programs;

h. Engage and/or collaborate with maritime academies and other institutions or organizations for advanced proficiency and higher education; and

i. Conduct other significant domestic maritime workforce development related activities.

7. All applicant institutions may provide any relevant endorsements, awards, recognition and significant accomplishments in support of their application.

Note: As part of designation, CoE designee institutions are geolocated on MARAD's CoE Interactive Map located on the MARAD website. In addition to identifying geographic location, this map also provides a link to a landing page for each institution and a brief narrative statement, an Institution Overview, about each institution's maritime program. Applicants are encouraged to take into consideration that the information they submit for 6a–6i may serve dual purpose: application support and content for a one-page institutional overview that highlights your institution's achievements and aspirations.

Paperwork Reduction Act

The information collection requirements in the final CoE designation policy have been approved under information collection number 2133–0549 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* In accordance with 5 CFR 1320.5(b)(2)(i), persons are not required to provide information to the Government unless the information collection displays a current and valid OMB control number. This application process is operating under the following current and valid OMB control number: 2133–0549.

(Authority: The National Defense Authorization Act for Fiscal Year 2023, Pub. L. 117–263 (December 23, 2022), 46 U.S.C. 51706. The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–15382 Filed 7–19–23; 8:45 am]

BILLING CODE 4910–81–P

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: USIP announces the next meeting of the Board of Directors.

DATES: Friday, July 21, 2023 (9:00 a.m.).

The next meeting of the Board of Directors will be held October 20, 2023.

ADDRESSES: 2301 Constitution Avenue NW, Washington, DC 20037

FOR FURTHER INFORMATION CONTACT: Megan O'Hare, 202–429–4144, *mohare@usip.gov.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: July 14, 2023.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2023–15349 Filed 7–19–23; 8:45 am]

BILLING CODE 2810–03–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatric and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch.10, that a meeting of the Geriatric and Gerontology Advisory Committee will be held in person or virtually on Tuesday, September 19, 2023, from 8 a.m. to 4 p.m. and Wednesday, September 20, 2023, from 8 a.m. to 12 noon (Eastern Daylight Time). This meeting will be held at the American Health Care Association 1201 L St NW, Washington, DC 20005, as well as virtually via WebEx and is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to:

Marianne Shaughnessy, Ph.D., AGPCNP–BC, GS–C, FAAN, Designated Federal Officer, Veterans Health Administration by email at *Marianne.Shaughnessy@va.gov.* Comments will be accepted until close of business on September 5, 2023. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend either in person or virtually or seeking additional information should email *Marianne.Shaughnessy@va.gov* or call 202–407–6798, no later than close of business on September 5, 2023, to provide their name, professional affiliation, email address and phone number. For anyone wishing to attend virtually, they may use the WebEx link for September 19, 2023: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m5ce88c71441022da641a7457671f2589* meeting number (access code): 2760 953 2619, meeting password: TMxssYB@599 or September 20, 2023: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m3c3fa92a99c22ab433e4cd80f0930d2c,* meeting number (access code): 2761 044 3914, meeting password: NAbHcYE?624, or to join by phone either day: 1–404–397–1596.

Dated: July 17, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–15421 Filed 7–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Veterans' Advisory Committee on Rehabilitation (hereinafter the Committee) will meet on Wednesday, August 2, 2023, and Thursday, August 3, 2023, at 1800 G Street NW, Washington, DC 20006, Conference Room 542. The meeting sessions will begin at 10 a.m. and conclude at 3 p.m. Eastern Standard Time. All sessions are open to the public.

The purpose of the Committee is to advise the Secretary of VA on the rehabilitation needs of Veterans with disabilities and the administration of VA's Veteran rehabilitation programs. During the meeting sessions, the Committee will discuss the following topics: VA Suicide Hotline routing, Individual Unemployability language clarification, and the Veteran Readiness and Employment Non-Paid Work Experience Program. The Committee will also invite speakers to provide information about other topics the Committee may utilize for potential 2023 recommendations.

Although no time will be allocated for receiving oral presentations from the public, the Committee will accept advance comments until close of business Friday, July 28, 2023. Members of the public may submit written statements for review by the Committee to Mr. David Smith, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420, or at *VACOR.VBACO@va.gov* or on (202) 461–9617. In the communication, writers must identify themselves and state the organization, association, persons or persons they represent.

Members of the public may attend in person at 1800 G St. NW, Washington, DC 20006, or virtually via Microsoft Teams.

Teams Meeting link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjU1MDdkZWEtNjhkMS00YmQwLWI1YzAtNWY2MWUzYmIxMWVk%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%228252bbc1-b123-48c8-aa1c-6f43c7d548c7%22%7d

or call in (audio only): +1 872–701–0185, United States, Chicago

Phone Conference ID: 356 832 538#

Dated: July 17, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–15433 Filed 7–19–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,
No. 138 July 20, 2023

Part II

Environmental Protection Agency

40 CFR Part 84
Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2022–0430; FRL–8838–02–OAR]

RIN 2060–AV45

Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending existing regulations to implement certain provisions of the American Innovation and Manufacturing Act. This rule establishes the methodology for allocating hydrofluorocarbon production and consumption allowances for the calendar years of 2024 through 2028. EPA is also amending the consumption baseline to reflect updated data and to make other adjustments based on lessons learned from implementation of the hydrofluorocarbon phasedown program thus far, including to: codify the existing approach of how allowances must be expended for import of regulated substances, revise recordkeeping and reporting requirements, and implement other modifications to the existing regulations.

DATES: This final rule is effective on September 18, 2023, except for amendatory instructions 3 and 13, which are effective October 1, 2024. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 20, 2023, and for certain other publications listed in the rule as of October 1, 2024.

ADDRESSES: The (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0430. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–1230; or email address: *feather.john@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we," "us," "the Agency," or "our" is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

ABI—Automated Broker Interface
AD/CVD—Antidumping and Countervailing Duty
AES—Automated Export System
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
AIM Act—American Innovation and Manufacturing Act of 2020
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
CAA—Clean Air Act
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
CRA—Congressional Review Act
DoC—Department of Commerce
DBA—Doing Business As
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EEI—Electronic Export Information
EPA—U.S. Environmental Protection Agency
EVe—Exchange Value Equivalent
FR—Federal Register
GHG—Greenhouse Gas
GHGRP—Greenhouse Gas Reporting Program
GWP—Global Warming Potential
HAP—Hazardous Air Pollutants
HCFC—Hydrochlorofluorocarbon
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HTS—Harmonized Tariff Schedule
HVAC—Heating, Ventilation, and Air Conditioning
ICR—Information Collection Request
IEC—International Electrotechnical Commission
IMO—International Maritime Organization
IPCC—Intergovernmental Panel on Climate Change
ISO—International Organization for Standardization
ITN—Internal Transaction Number
LCD—Liquid Carbon Dioxide
$MMTCO_2e$—Million Metric Tons of Carbon Dioxide Equivalent
MMTEVe—Million Metric Tons of Exchange Value Equivalent
MTEVe—Metric Tons of Exchange Value Equivalent
MVAC—Motor Vehicle Air Conditioning
NAICS—North American Industry Classification System
NATA—National Air Toxics Assessment
ODS—Ozone-Depleting Substances
OEM—Original Equipment Manufacturer
OSHA—Occupational Safety and Health Administration
PRA—Paperwork Reduction Act
RACA—Request for Additional Consumption Allowances
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
TCE—trichloroethylene
TRI—Toxics Release Inventory
UMRA—Unfunded Mandates Reform Act
XPS—Extruded Polystyrene

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I. Executive Summary

A. Purpose of the Regulatory Action

EPA is finalizing amendments to existing regulations to implement certain provisions of the American Innovation and Manufacturing Act of 2020 (AIM Act), as enacted on December 27, 2020. The Act mandates the phasedown of hydrofluorocarbons (HFCs), which are highly potent greenhouse gases (GHGs), by 85 percent by 2036. The Act directs EPA to implement the phasedown by issuing a fixed quantity of transferrable production and consumption allowances, which producers and importers of HFCs must expend in quantities equal to the amount of HFCs they produce or import. To continue implementation of the allowance program and the overall phasedown of HFCs, this rulemaking establishes the allowance allocation methodology for calendar years 2024 through 2028,[1] adjusts the consumption baseline based on updated data received and further reviews, and revises provisions to support implementation of, compliance with, and enforcement of statutory and regulatory requirements under the AIM Act's phasedown provisions.

Under the AIM Act, by October 1 of each calendar year EPA must calculate and determine the quantity of production and consumption allowances for the following year. Using the procedure established through this rulemaking, the Agency intends to both issue allowances for the 2024 calendar year no later than October 1, 2023, and continue allocating annually, through the calendar year 2028 allowances, no later than October 1 of the previous year.

B. Summary of the Major Provisions of the Regulatory Action

Allowance Allocation Methodology: In this rule EPA establishes the methodology for allocating production and consumption allowances for calendar years 2024 through 2028. The Agency is basing these general pool allocations on entities' market shares derived from the average of the three highest years of production and consumption, respectively, of regulated substances between 2011 and 2019. To be eligible to receive general pool allowances for 2024 through 2028 based on historic production and import activity, an entity must have produced or imported bulk regulated substances in 2021 or 2022. For participants in the new market entrant pool, EPA will determine for each former new market entrant a stand-in high three-year average based on the number of allowances allocated in 2023 and the percent reduction all general pool allowance holders experience in 2023 relative to the average of their three highest years of consumption. The Agency is also clarifying that entities may confer or transfer allowances at any point after they are allocated until the allowance expires at the end of the calendar year for which it was allocated.

Consumption Baseline: EPA is amending the consumption baseline from 303,887,017 Metric Tons of Exchange Value Equivalent (MTEVe) to 302,538,316 MTEVe to account for verified revisions from entities for 2011 through 2013 and the Agency's internal review of baseline calculation methodologies.

Imports and Allowance Expenditures: EPA is revising existing language to require that allowances be expended at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air. The Agency is also adding requirements that only the importer of record can expend allowances and that the importer of record be in possession of allowances in the amount that will need to be expended at the time of filing their advance report. Associated with these requirements, EPA is amending existing provisions to make it clear that any person who meets the definition of an importer in the 40 CFR part 84 regulations could be held liable for imports of regulated substances without necessary expenditure of allowances unless they can demonstrate that the importer of record possessed and expended the appropriate allowances. Furthermore, the Agency is making a revision to reflect and further clarify the existing requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component or as part of a multicomponent substance.

Recordkeeping and Reporting: EPA is revising and adding requirements to a variety of recordkeeping and reporting provisions, including provisions to specify that the importer of record or their authorized agent must file the advance notification and quarterly reports; require the submission of both the net weight (or net product weight) and gross weight (net weight plus container weight), as well as unit of mass (*i.e.,* kilogram), for each container in the shipment in the advance notification report; shorten the advance notification reporting requirements to 5 days in advance for truck, rail, air, and other non-sea arrivals and 10 days in advance for sea arrivals; reiterate that the harmonized tariff schedule (HTS)

[1] In the context of this rule, ''2024 through 2028'' means ''2024 through, and including, 2028.''

Code for the regulated substance must be used for the import of any regulated substance; require that certain information must be submitted by any entity anticipating being the importer of record for a shipment of regulated substances by November 15 of the prior calendar year; require reporting of the name, quantity, and recipient facility for regulated substances produced at one facility for transformation, destruction, or use as a process agent at another facility owned by the same entity; and to add the Internal Transaction Numbers (ITN) and Electronic Export Information (EEI) documents as required data elements for Request for Additional Consumption Allowance (RACA) submissions.

Sampling and Testing: EPA is amending requirements related to verifying composition and specifications of regulated substances offered for sale or distribution. These revisions establish additional verification requirements and codify procedures to be followed to meet the requirement to test a representative sample. The Agency is finalizing the following provisions to add that already required sampling and testing of regulated substances must follow a combination of methodologies to verify the label composition for all applications; require sampling and testing by exporters; add a requirement to sample and test under specified methodology to ensure compliance with the existing requirements concerning specifications; define the records required associated with testing and add recordkeeping requirements for fire suppression recyclers, repackagers, and exporters; add definitions of ''batch'' and ''representative sample'' and clarify the relationship between these terms; add a definition for ''laboratory testing'' such that laboratories must be certified or accredited; and add a requirement that certificates of analysis accompany all imports of regulated substances.

Other Revisions: EPA is also finalizing additional regulatory changes based on lessons learned and current practices that have proved useful in implementing the HFC phasedown. Among these, the Agency is defining ''expend'' to mean to subtract the number of allowances required for the production or import of regulated substances under 40 CFR part 84 from a person's unexpended allowances. EPA is also adding more detail and specificity concerning features on all labels or markings and specifying that no one other than the importer of record may repackage or relabel regulated substances which were initially unlabeled or mislabeled. The Agency is clarifying that allowances can be expended by parents, subsidiaries, sister, or commonly owned companies without a transfer.

II. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS Code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150	Urethane and Other Foam Product
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.
541714	Research and Technology in Biotechnology (except Nanobiotechnology).
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160	Fire Protection.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section.

B. What are HFCs?

HFCs are anthropogenic [2] fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs are potent GHGs with 100-year global warming potentials (GWPs) (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times that of carbon dioxide (CO_2).

HFC use and emissions have been growing worldwide due to the global phaseout of ozone-depleting substances (ODS) under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), and the increasing use of refrigeration and air-conditioning equipment globally.[3] HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. The United States ratified the Kigali Amendment on October 31, 2022. Global adherence to the Kigali Amendment would substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.[4 5]

There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs (neat and in blends) and have high impacts as measured by the quantity of each substance emitted multiplied by their respective GWPs. These 18 HFCs are all saturated, meaning they have only single bonds between their atoms, and therefore have longer atmospheric lifetimes. More detailed information on HFCs, their uses, and their impacts is available in this rulemaking's proposal (87 FR 66375, November 3, 2022) and associated supporting documentation, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0430).

We also discuss costs and benefits associated with this action in section IX of this preamble, and consider potential environmental justice impacts in section X of this preamble.

C. What is the AIM Act, and what authority does it provide to EPA as it relates to this action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (42 U.S.C. 7675). The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program, facilitating sector-based transitions to next-generation technologies, and promulgating certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs from equipment. This rulemaking focuses on the first area—the phasedown of the production and consumption of HFCs.

Subsection (e) of the AIM Act gives EPA authority to phase down the production and consumption of listed HFCs through an allowance allocation and trading program. Subsection (c)(1) of the AIM Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act. Congress also assigned an ''exchange value'' [6 7] to each regulated substance (along with other chemicals that are used to calculate the baseline). EPA has codified the list of the 18 regulated substances and their exchange values in appendix A to 40 CFR part 84. Congress gave EPA authority to designate new regulated substances under subsection (c)(3), but the Agency is not here designating any new regulated substances, just as the Agency did not designate any new regulated substances in the previous October 5, 2021, rulemaking (86 FR 55116; hereinafter called the Allocation Framework Rule; see ''Response to Comments'' page 193 for Docket ID No. EPA–HQ–OAR–2021–0044).

The AIM Act requires EPA to phase down the consumption and production of the statutorily listed HFCs on an exchange value-weighted basis according to the schedule in subsection (e)(2)(C) of the AIM Act. The AIM Act requires that the EPA Administrator ensures the annual quantity of all regulated substances produced or consumed [8] in the United States does not exceed the applicable percentage listed for the production or consumption baseline. EPA has codified the phasedown schedule at 40 CFR 84.7.

To implement the directive that the production and consumption of regulated substances in the United States does not exceed the statutory targets, the AIM Act in subsection (e)(3) requires EPA to issue regulations establishing an allowance allocation and trading program to phase down the production and consumption of the listed HFCs. These allowances are limited authorizations for the production or consumption of regulated substances. Subsection (e)(2) of the Act has a general prohibition that no person [9] shall produce or consume a

[2] While the overwhelming majority of HFC production is intentional, EPA is aware that HFC–23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22 and other fluorinated gases.

[3] World Meteorological Organization (WMO), *Scientific Assessment of Ozone Depletion: 2018,* World Meteorological Organization, Global Ozone Research and Monitoring Project—Report No. 58, 67 pp., Geneva, Switzerland, 2018. *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.*

[4] Ibid.

[5] A recent study estimated that global compliance with the Kigali Amendment is expected to lower 2050 annual emissions by 3.0–4.4 Million Metric Tons of Carbon Dioxide Equivalent ($MMTCO_2e$). Guus J.M. Velders et al. *Projections of hydrofluorocarbon (HFC) emissions and the resulting global warming based on recent trends in observed abundances and current policies.* Atmos. Chem. Phys., 22, 6087–6101, 2022. Available at *https://doi.org/10.5194/acp-22-6087-2022.*

[6] EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the GWPs included in the Intergovernmental Panel on Climate Change (IPCC) (2007). EPA uses the terms ''global warming potential'' and ''exchange value'' interchangeably in this proposal.

[7] IPCC (2007): Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Berntsen, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt, 2007: Technical Summary. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA *https://www.ipcc.ch/report/ar4/wg1.*

[8] In the context of allocating and expending allowances, EPA interprets the word ''consume'' as the verb form of the defined term ''consumption.'' For example, subsection (e)(2)(A), states the phasedown consumption prohibition as ''no person shall . . . *consume* a quantity of a regulated substance without a corresponding quantity of consumption allowances.'' While a common usage of the word ''consume'' means ''use,'' EPA does not believe that Congress intended for everyone who charges an appliance or fills an aerosol can with an HFC to expend allowances.

[9] Under the Act's term, this general prohibition applies to any ''person.'' Because EPA anticipates that the parties that produce or consume HFCs—

Continued

quantity of regulated substances in the United States without a corresponding quantity of allowances.

EPA published the Allocation Framework Rule, which, among other things: established the HFC production and consumption baselines; determined an initial approach to allocating production and consumption allowances for 2022 and 2023, identifying both the entities receiving allowances and how to determine what quantities of allowances they would receive; established a process for issuing "application-specific" allowances to entities in six specific applications listed in subsection (e)(4)(B)(iv) of the AIM Act; created a set-aside pool of allowances for new entrants and entities for which the Agency did not have verifiable data prior to the finalization of the rule; established provisions for the transfer of allowances; established recordkeeping and reporting requirements; and established a suite of compliance and enforcement-related provisions. Unless otherwise stated in the sections included in this action, EPA's requirements and revisions are based on the same interpretations of the AIM Act, and the Clean Air Act (CAA) as applicable under subsection (k) of the AIM Act, as discussed in the Allocation Framework Rule. EPA also has authority to prevent and identify noncompliance and to create a level playing field for the regulated community.

III. How is EPA determining allowance allocations starting in 2024?

Subsection (e)(3) of the AIM Act requires EPA to implement the statutorily established phasedown of the production and consumption of regulated substances through "an allowance allocation and trading program." Additional discussion of how allowances work, including the decision to allocate consumption and production allowances on an exchange-weighted basis, is available in the Allocation Framework Rule at 86 FR 55142–43. This approach was not reopened in this action.

This section provides an overview of EPA's methodology for issuing calendar year production and consumption allowances starting in calendar year 2024. In the Allocation Framework Rule, EPA codified an initial approach to allocating production and consumption allowances for calendar years 2022 and 2023, but did not establish any allocation methodology for further years. EPA made clear that the Agency intended to revisit how to allocate production and consumption allowances for 2024 and beyond. EPA presented and took advance comment on ideas on potential criteria and a framework for issuing allowances for 2024 and later years. EPA stated that comments received on the elements noted for advance comment would be taken under advisement by the Agency and incorporated, as appropriate, in future and separate rulemakings with an opportunity for public comment prior to finalization of any provisions. Accordingly, EPA considered the advance comments provided on potential methodologies for allocating allowances starting with calendar year 2024 allowances in development of the proposed rulemaking. Those comments can be found at Docket ID No. EPA–HQ–OAR–2021–0044. EPA is not including those comments in the docket for this rule, does not consider those advance comments to be part of this rulemaking record, and does not anticipate providing any further response to them. Comments received during the public comment period for this rulemaking on how EPA may allocate production and consumption allowances for 2024 and beyond will be addressed either in the preamble of this rulemaking or the response to comments document, available in the docket.

EPA did not reopen the methodology for issuing application-specific allowances, and the existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Allocation Framework Rule. The Agency has begun development of a rule to review and consider whether to renew eligibility for each of the six applications for application-specific allowances and to consider revisions to existing regulatory requirements. EPA is planning to issue a proposed rulemaking in the first half of 2024.

A. For which years is EPA establishing the allocation methodology?

EPA is finalizing as proposed that the methodology for allocating production and consumption allowances described in this section of the preamble will apply for allocation of allowances for calendar year 2024 through calendar year 2028. During these five years, the annual production and consumption caps established in the AIM Act will be 60 percent of the baseline.[10]

While the Agency's primary proposal was to establish an allowance methodology through 2028 and reassess the methodology for allocation of calendar year 2029 production and consumption allowances, EPA also considered whether it may be less disruptive to the market to reassess and potentially change methodologies in a year prior to or after a phasedown step (*e.g.,* alter the methodology for allocation of calendar year 2028 or 2030 allowances, instead of aligning with the next phasedown step in 2029). Additionally, EPA sought input on whether it would be appropriate to establish the methodology through a different phasedown step, such as through the allocation of calendar year 2036 allowances when the production and consumption caps reach 15 percent of baseline.

Commenters had a variety of views. Approximately half of the commenters on this topic supported EPA's approach of covering calendar year 2024 through calendar year 2028. The remaining commenters on the issue expressed a preference for or suggested that the Agency include years beyond calendar year 2028, *e.g.,* either through calendar year 2030 or through calendar year 2036. Of these, approximately half did not object to the Agency's proposal of covering calendar year 2024 through calendar year 2028 but preferred a longer period, namely through 2036. Commenters that supported extending EPA's allocation methodology further into the future cited several factors. They asserted that extending the applicable years for the methodology past 2028 would provide consistency and clarity to industry while simultaneously preventing further disruption to the industry. Commenters cited time, investments, and resources as integral to implementing the phasedown, and extending the applicable years past 2028 would facilitate effective business planning, long-term contracting, and a seamless transition to HFC substitutes. Another benefit cited by commenters is that with a longer applicability period, entities have greater ability to make critical decisions regarding usage of allocations and supply planning. Several commenters also noted that even if EPA were to extend the years covered by this rule past 2028, the mandated phasedown could still occur, *i.e.,* a longer time period would not change

and that would thus be subject to the Act's production and consumption controls—are companies or other entities, we frequently use those terms to refer to regulated parties in this rule. Using this shorthand, however, does not alter the applicability of the Act's or regulation's requirements and prohibitions. Similarly, in certain instances EPA may use these terms interchangeably in this rule preamble, but such differences in terminology should not be viewed to carry a material distinction in how EPA interprets or is planning to apply the requirements discussed herein.

[10] In 2029, the production and consumption caps decline to 30 percent of baseline.

the statutory and regulatory schedule and national targets for HFC production and consumption.

In response, as explained in the proposed rulemaking, EPA used a similar approach of periodically revisiting its allocation methodology when phasing down HCFCs under Title VI of the CAA. Periodically revisiting the allowance allocation methodology allowed the Agency to respond to changing market conditions and/or challenges in program implementation. Examples of changes in market conditions that the Agency could potentially consider in revisiting its methodology in the HFC phasedown include, among other things, companies entering or exiting the market, significant quantities of allowances unexpended at the end of the year, and/or supply shortages, or oversupplies, for specific HFCs.

Implementing the allocation methodology through calendar year 2028 will allow EPA to review and revisit it in advance of the next phasedown step, which occurs in 2029. EPA will be able to consider lessons learned from implementation, prior year use of allowances, and any concerns surrounding distribution of allowances prior to the next reduction in the production and consumption caps. Even if the Agency were to determine as part of the future rulemaking establishing an allocation methodology for calendar year 2029 allowances that it should not make any change in the allocation methodology, being able to make that assessment is important for a smooth and successful phasedown for the reasons described in this section. This approach also allows EPA to consider whether regulatory changes are warranted as a result of market shifts that may occur as a result of other regulations under the AIM Act (*e.g.,* final technology transition and HFC management rules). Establishing a methodology for five years, as opposed to a shorter period of time, is also intended to provide allowance holders a level of predictability for allocation levels through the phasedown step.

As transition to substitutes continues, the market dynamics may shift towards increased or decreased need for certain HFCs. Specifically, on commenters' points in favor of extending the methodology past calendar year 2028, EPA's proposed rulemaking also explained that establishing a methodology from 2024 through 2028 (and not shorter) is intended to provide allowance holders a predictable understanding of a likely range of allocation levels for these five years so they can make longer term decisions and plans about how to deploy their allowances (*e.g.,* whether to transfer or produce or import directly). Any subsequent methodology rulemaking will also require notice and comment, thereby providing EPA a predictable timeline for evaluating potential challenges, sharing that information with the regulated community, along with any proposed changes to remedy those challenges, and stakeholders the opportunity to provide feedback.

Furthermore, with respect to business planning, long-term contracting, HFC substitute transitions, and other issues related to allocations and supply planning, EPA observes that independent of this rulemaking or any other methodology rulemaking, entities can run scenarios and anticipate various business, technology, or supply chain models on their own. In other words, the timeline for the phasedown of HFCs has been directed by the AIM Act and therefore entities know the phasedown schedule. Even in the absence of knowing their individual allocations for every year, companies are still able to plan for a future where the amount of HFCs produced and imported will decrease, recognizing those decreases are most acute in 2024 and 2029. Other AIM Act regulations are expected to establish requirements that may affect the HFC market, such as by restricting the use of regulated substances in certain sectors and subsectors or by encouraging maximizing reclamation and minimizing the release of a regulated substance from equipment. Entities need not rely solely on EPA's phasedown regulations—they can use all of these factors, including ongoing technology and market transitions, to drive their planning (*e.g.,* whether and when to transition their production or import to lower GWP HFCs or substitutes). Lastly, the Agency notes that other Federal regulations both with respect to HFCs and other media may inform and provide insight on industry trends and forecasting that may facilitate with entities' planning needs.

One commenter asserted that the AIM Act requires EPA to establish an allowance methodology for 2024 through 2036. The commenter stated that the AIM Act directed EPA to issue a singular ''final rule'' by ''270 days after December 27, 2020'', that provides for the phasedown of the production and consumption of regulated substances ''through an allowance allocation and trading program.'' The commenter seems to argue that in referring to a singular final rule to establish an allowance allocation program, Congress required EPA to promulgate a singular final rule establishing an allowance allocation methodology for the entire length of the HFC phasedown. The commenter points to EPA's prior phasedown rule as a ''partial rule'' to implement the HFC phasedown for 2022 and 2023 and alleges that EPA is now late in finalizing a rule to address the Congressional mandate to establish the allowance allocation program. The commenter noted that EPA was on a short timeframe (270 days) to finalize the Allocation Framework Rule, which was cited by EPA in putting out the partial rule addressing allocation methodology for just two years, but EPA cannot rely on such a rationale in this rulemaking, so the Agency now must fulfill its statutory duty to promulgate a singular rule establishing the allocation methodology through 2036. The commenter also contended that EPA's rationale for establishing the allocation methodology only through 2028, and examples of considerations for establishing future methodology such as companies entering or exiting the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, and/or supply shortages for specific HFCs, are not a sufficient basis to ignore what the commenter contends is a statutory directive to establish the allowance allocation methodology through calendar year 2036. The commenter stated that while it is possible, perhaps even inevitable, that the HFC market will change over the next 12 to 13 years, this does not justify limiting the allowance allocation methodology to calendar year 2024 through calendar year 2028. Instead, the commenter contended that if EPA believes it has the authority to adjust the allowance methodology to address the changes in the HFC market described in the proposed rulemaking, the Agency could seek to exert authority to do so when such conditions become evident. Lastly, the commenter claimed that EPA's past practice for the phaseout of HCFCs under Title VI of the CAA, *i.e.,* a chemical by chemical and prioritized system, does not provide the Agency with either authority, direction, or relevance for the phasedown of HFCs.

EPA disagrees with the commenter's contention that AIM Act subsection (e)(3) requires EPA to establish a permanent allowance allocation methodology. EPA notes that the AIM Act required EPA to establish regulations within 270 days of enactment, and EPA met the directive of subsection (e)(3) in finalizing the Allocation Framework Rule no later than 270 days after the passage of the

AIM Act. In the Allocation Framework Rule, EPA established the baselines, codified the numeric phasedown schedule, established requirements and prohibitions around production and consumption of regulated substances without allowances, and created the regulatory framework for allowance trading. This rulemaking fulfilled the requirements of AIM Act subsection (e)(3) to ''issue a final rule'' phasing down production and consumption of regulated substances ''through an allowance allocation and trading program.'' In this section of this final rule, EPA has outlined the reasons why it is appropriate at this juncture to establish the allowance allocation methodology through 2028 at which point the Agency will revisit the allocation methodology.

Even if EPA were to agree with the commenter's contention regarding the language in (e)(3), which the Agency does not, it is not clear why the commenter's interpretation of it—that EPA must establish an allowance allocation methodology through 2036—is correct either. In the AIM Act, Congress mandated a phase down, not a phase out, of HFCs. The final phasedown step is 15 percent of baseline levels of production and consumption in 2036. Unless Congress acts to amend the AIM Act or EPA acts to alter the phasedown schedule according to subsection (f) of the AIM Act in response to a petition, production and consumption of HFCs will continue after 2036 indefinitely.

EPA also does not agree with the commenter's characterization of the Agency's ability to revisit the allocation methodology in future years. EPA has authority to reconsider and/or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. Courts have recognized that ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017). The commenter seems to acknowledge that such authority exists in noting that if EPA believes it has the authority to adjust the allowance methodology to address the changes in the HFC market described in the proposed rulemaking, the Agency could seek to exert authority to do so when such conditions become evident. EPA's authority to revisit the allocation methodology is a compelling reason why it is permissible for EPA to establish the allocation methodology in a stepwise fashion in the first instance. It is less disruptive to the regulated community for EPA to be transparent about the points in time that the Agency will revisit the allocation methodology in the first instance, rather than establishing an allocation methodology now without a defined timeframe while retaining the ability to revisit that methodology at an undefined future point in time.

B. What is EPA's framework for determining how many allowances each entity receives?

This section discusses how EPA will determine the quantity of production and consumption allowances each entity will receive. As noted in the Allocation Framework Rule and reiterated in the proposal for the current rulemaking, EPA seeks to provide as smooth a transition as possible from HFCs as the phasedown proceeds and ensure that allowance allocations can be made no later than October 1, 2023.[11] As EPA has chosen to allocate allowances based on historic production and consumption activity levels, EPA has also prioritized in such a scenario selection of a methodology that utilizes robust, verified, and well-understood data. EPA proposed to use a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate entities whose applications were granted as new market entrants[12] pursuant to 40 CFR 84.15(e)(3).

1. Which methodology is EPA using as the basis for allocations?

EPA proposed to base production allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of production of regulated substances between 2011 and 2019. EPA proposed to base consumption allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of consumption of regulated substances between 2011 and 2019. The proposed rulemaking described the Agency's approach for companies who do not have three years of data; EPA proposed to take the average of the years between 2011 and 2019 for which each company produced and/or imported HFCs. Production allowances would be determined for each company based on the exchange value equivalent (EVe) quantity of HFCs they produced (subtracting out the amounts of HFCs produced that are used and entirely consumed except for trace quantities in the manufacture of another chemical, *i.e.,* transformation, and the amounts of HFCs that are destroyed). Consumption allowances would be determined for each company based on the EVe quantity of HFCs they produced (see preceding sentence for description) plus the amount they imported (excluding the amount imported for transformation or destruction) minus the amount exported. EPA proposed to use historic production and consumption data from 2011 to 2019, matching the approach taken for allocating calendar year 2022 and 2023 allowances, for many of the reasons described in the Allocation Framework Rule (86 FR 55145–55147).

Most allowance holders, associations representing different parts of the industry, and environmental non-governmental organizations supported EPA's proposal to use 2011 to 2019 production and consumption activity as the years to evaluate for allocations. Several allowance holders and a number of importers and their customers (*e.g.,* distributors and heating, ventilation, and air conditioning (HVAC)), on the other hand, asserted that EPA should include more recent years, namely 2020 and 2021, as part of the years to be considered in the allocation methodology. Commenters asserted that by not using import data after 2019, the allowance program would reflect a market that no longer exists, and already would not have existed for several years. They contended that by excluding 2020 and 2021 in the Allocation Framework Rule (thereby affecting the allocations for 2022 and 2023) the most relevant years of activity for some groups of customers and their suppliers, were unaccounted for. One of the commenters also hypothesized that market dynamics and trends in 2020 and 2021 were not only more representative of real-world conditions but also more aligned with current Department of Commerce (DoC) findings, specifically with respect to decreased import activity in 2020 and 2021 as a result of the DoC's additional

[11] Under the AIM Act, by October 1 of each calendar year EPA must calculate and determine the quantity of production and consumption allowances for the following year. EPA intends to issue allowances for the 2024 calendar year no later than October 1, 2023, using the procedure established through this rulemaking.

[12] EPA allocated calendar year 2022 and 2023 consumption allowances to entities that met the criteria of 40 CFR 84.15(c)(2) from the pool of set-aside allowances established in the Allocation Framework Rule; EPA issued a final agency action determining which entities were eligible for these allowances on March 31, 2022. In the context of this action, EPA generally refers to these entities as new market entrants. As discussed in this section, EPA is not establishing another pool of set-aside allowances or extending 40 CFR 84.15(c)(2) to future new market entrants.

Antidumping and Countervailing Duty (AD/CVD) findings and actions on certain HFCs that had been imported between 2015 and 2019.

After consideration of these comments, EPA has determined that there are many advantages to using data from the 2011 to 2019 timeframe and reasons for excluding data from 2020 and 2021. EPA has considered whether to include more recent data in determining allocation levels given the comments that more recent data may be a more accurate reflection of the current state of the HFC production and import market. The commenters allege that by looking at data from 2011 through 2019, EPA would be looking to data of a market that no longer exists. EPA recognizes that 2020 and 2021 are more recent years, however EPA has determined that the data from 2020 and 2021 are less representative due to several important global and market factors, and therefore do not accurately represent companies' market share. EPA acknowledges that in making this choice, the Agency is fundamentally excluding the most recent years to date, but the Agency has determined that the market could have been so significantly skewed in those years that depending on them would lead to an unrepresentative and ill-suited data set. In subsequent paragraphs, EPA discusses recent import activity of regulated HFCs, specifically with respect to the stark, unprecedented, and otherwise inexplicable (aside from stockpiling) increase in import activity in 2021 from a limited number of entities. HFCs are not perishable goods, so stockpiling for later sale allows entities who had the resources to acquire and store HFCs in one year in anticipation of future years' demand as HFC production and consumption is phased down. Issuing allowances based on stockpiling is counter to one of the Agency's goals that allowances should be distributed and available to entities based on their historic HFC production and/or import for near-term need of those HFCs. Ensuring the HFCs are going to entities that are using them to meet near-term needs is an important way to reduce disruption to the market, especially considering the imminent production and consumption stepdown beginning in 2024, and allocating based on stockpiling would directly reduce allowance allocations for those entities who are meeting near-term need. Continuing to use the same basis years as the Agency used to allocate calendar year 2022 and 2023 allowances, combined with a using production and import activity in 2021 and 2022 to determine eligibility, ensures the entities receiving allowances are prepared to use them to satisfy current customer demands, decreasing the likelihood of further disruption to the market.

The Agency recognizes that production and importation of HFCs in 2020 and 2021 were influenced by external factors such as the COVID–19 pandemic and supply chain disruptions, potentially including shortages of key materials necessary for the production of HFCs, which created well-documented market distortions on a global scale. In addition, data from 2020 and 2021 are distorted due to entities' awareness in 2020 of Congress's efforts to pass legislation to regulate HFCs and in 2021 awareness of the AIM Act itself. The Agency also notes that the AIM Act was first introduced in 2018, and Congressional activity picked up significantly in 2020 with a Congressional hearing in the House in January 2020 and an information gathering process in the Senate between March and April. Additionally, Senators Carper and Kennedy offered the AIM Act as an amendment to the American Energy Innovation Act in March 2020, and announced an agreement with Senator Barasso to update the AIM Act amendment to the American Energy Innovation Act in September 2020. While producers and importers may not have known the AIM Act would pass specifically in December 2020, this level of Congressional interest and activity as well as the significant industry and environmental organization support for the legislation could reasonably have affected business decisions including decisions to stockpile HFCs in advance of a phasedown. It is likely that some entities increased their production and imports to stockpile HFCs in advance of the restrictions on production and import of regulated substances. Some companies also likely increased their import and production in patterns that did not align with their actual needs or business model, gambling that EPA would set up an allocation system similar to the ODS phaseout and look at company-specific historic data. Recent feedback, including some comments on the proposed rulemaking, appear to support this assessment including a statement from one importer indicating they are still drawing down significant inventories built prior to initiation of the HFC phasedown. Moreover, updated 2021 data from EPA's Greenhouse Gas Reporting Program (GHGRP) show that the net supply of HFCs in $MMTCO_2e$ in 2021 was approximately 150 percent that of the 2020 level, and additionally, that imports of HFCs were approximately 215 percent that of the 2020 level, providing further evidence that there was significant stockpiling. For context, when evaluating year over year fluctuations in HFC import activity from GHGRP between 2011 and 2021, the next highest year over year increase was between 2014 and 2015 (approximately 167 percent), with more recent pre-pandemic years, *i.e.,* between 2015 and 2019, showing a maximum year over year increase between 2016 and 2017 of approximately 120 percent. This strongly suggests that the increased imports in 2021 may well have been due to stockpiling ahead of the commencement of the AIM Act's phasedown, rather than due to use or demand. All of these factors lead EPA to conclude that the 2020 and 2021 data is an unrepresentative data set in terms of reflecting existing market conditions. By using those years of data, EPA could unfairly give additional weight to some entities that imported amounts that were not reflective of demand from entities that are putting regulated substances to near-term productive use rather than stockpiling regulated substances in advance of the phasedown. Looking at individual company import activity in 2021 as reported to the GHGRP, provides further evidence of stockpiling. Five companies are responsible for approximately 97 percent of the net increase in import activity (expressed in $MTCO_2e$) between 2020 and 2021, and 14 companies had 2021 import activity of at least double their 2020 import activity expressed in $MTCO_2e$.

As explained in the proposed rulemaking, using an average of the three highest years during the 2011 to 2019 period incorporates consideration of both industry history and ongoing growth and market change. EPA recognizes that there is no single year that is ''better'' for all market participants, but for added and relevant context, the commenters above were comprised of approximately 40 entities sending several groups of similar form letters, and survey responses from approximately 290 respondents, all of which are either suppliers or customers in the HVAC aftermarket, wholesale, and service industry. On the other hand, the Agency received comments from a trade organization whose members represent 70 percent of the dollar value of the HVAC-Refrigeration market, 400 whole companies, nearly 300 manufacturing associates and nearly 100 manufacturer representatives, who supported the Agency's proposal to exclude 2020 and 2021 from evaluation

for the various reasons described in the proposed rulemaking, including the Agency's position on both industry history and ongoing growth and market change. When evaluating the comments and breadth of stakeholders that are covered, EPA does not find compelling the limited set of assertions that may only be applicable to a partial subset of entities.

EPA disagrees with one of the commenter's assertions that data from 2020 and 2021 would be more reliable because it would reflect decreased import activity as a result of the DoC's additional AD/CVDs findings and actions on certain HFCs imported between 2015 and 2019. DoC findings or actions with respect to AD/CVDs for affected regulated HFCs, *e.g.,* the February 28, 2022, ''Hydrofluorocarbon Blends from the People's Republic of China: Continuation of Antidumping Duty Order'' (87 FR 11044), are not intended to be a deterrent for importing HFCs; instead, they are intended to offset the value of dumping and/or subsidization, thereby leveling the playing field for domestic industries injured by such unfairly traded imports. The commenter has provided no evidence to suggest that import volumes changed in imported regulated substances in 2020 and 2021 directly as a result of DoC findings or actions. However, even if that were the case, the commenter has not provided sufficient rationale for why this would trump all of the other concerns the Agency has outlined with respect to data from 2020 and 2021. Commenters also argued the inclusion of 2020 and 2021 consumption activity would help minimize the disruption to the market. They disagreed that using the same timeframe as finalized in the Allocation Framework Rule would minimize disruption (and provide a smooth transition from HFCs through the next phasedown step) to the market in 2024. Commenters alleged the market has not adjusted to entity-specific allocations and is instead in turmoil, *e.g.,* scarcity of needed products, increased pricing, and supply chain issues to the aftermarket, partially because the Agency's initial allocations for 2022 and 2023 were premised upon data excluding 2020 and 2021. These commenters insisted that if EPA were to use the proposed set of years to evaluate allocations beginning in 2024, the same disruptions would only be compounded as the historic activity under review would be even further outdated.

EPA disagrees with these comments. Expanding the range of years considered in determining entities' market share for purposes of calculating allowance allocations could significantly change each entity's market share. This inherently would mean a significant change in allocation levels from what was determined for calendar year 2022 and 2023 allowances. As noted at the proposal stage, this significant change in allocation levels would likely disrupt the market and negatively affect ongoing adjustments to the HFC Allocation Program that have taken place in 2022 and 2023. Allowance holders and their supply chains have been adjusting to the HFC Allocation Program, and more specifically, entity-specific allocation levels, including by reoutfitting production lines, undertaking corporate mergers and acquisitions, making importer/exporter arrangements, and transitioning business models including with the introduction of new chemicals. A key goal of EPA's administration of the HFC allocation system is to provide a smooth transition from HFCs through the next phasedown step. EPA acknowledges the assertion that there may be some instances of scarcity of needed products, increased pricing, and supply chain issues to the aftermarket, but these comments do not explain how or why this is attributable to EPA's choice of allocation methodology as opposed to market pressures inherent in the AIM Act, which phases down a group of chemicals currently in use. EPA fully expects that during the phasedown, prices will increase for all or at least for many regulated substances. The Agency recognizes there could be scarcity of certain virgin HFCs at times, though virgin HFCs can be replaced with reclaimed HFCs, which should ensure that consumer needs are meet and equipment can be serviced throughout its useful lifetime. Changes in the market are inherent during a phasedown. Based on EPA's technical expertise and knowledge of the production and imports market for fluorinated gases, EPA is concerned that alterations to the years of data used for determining allocations directly ahead of this significant phasedown step would contribute to further market pressures leading to price spikes and lack of availability of HFCs in sectors that are not yet prepared to transition into different chemicals.

EPA is finalizing a continued use of the same set of years because the Agency has determined that this has the best means for reducing (though not eliminating) disruption to the market, which is valuable because reducing U.S. production and import from 90 percent of baseline to 60 percent of baseline will result in other changes to business practices, such as the increased use and changes in production or import of substitutes and reclaimed HFCs. Using the same methodology will provide continuity between two stepdown periods and will allow producers and importers to estimate their anticipated allocation and plan accordingly. Although there will be some entity-specific revisions due to corrected historic data, entities have more specific insights on what proportion of available production and consumption allowances they would be allocated as a result of the Agency's previously established methodology and calculations.[13] Regulated entities have also previously expressed a preference for allowances to be allocated using a consistent approach for as long as possible. Applying a similar approach as the one taken for calendar year 2022 and 2023 for calendar year 2024 through calendar year 2028 will provide a longer-term planning horizon for HFC producers and entities importing, which will enable entities to make decisions about which HFCs, and HFC substitutes, to produce and import as the market transitions away from high EVe regulated substances.

Commenters also identified several mechanisms for which EPA should already have complete sets of data (specifically consumption) for 2020 and 2021, as well as the ability to properly evaluate these datasets for the purposes of allocations beginning in 2024. They cited that EPA's position—that quality assurance procedures could not have been completed early enough in the process for the Allocation Framework Rule—would not be an issue for allocations beginning in 2024. Specifically, because GHGRP data is typically released in October for the prior year, these commenters noted that EPA should already have access to the full data sets for 2020 and 2021. These commenters also cited steps that EPA has taken to validate data for 2020 and 2021, including the electronic communications that the Agency sent to all entities who were known or likely to have had consumption activity of regulated substances from 2011 through

[13] In addition to entity-specific revisions affecting their own allowances, entities should also be aware of other factors that may inform their insights, including the number of application-specific allowances allocated, EPA's final approach to the treatment of entities who were previous new market entrants, finalized changes to the baseline based on corrected historic reporting, changes in the number of entities who receive allowances, and the Agency's final approach to acquisitions. All of these factors are discussed in detail in the preamble to this rule, and any reference to expectations from EPA on entities for this rulemaking when compared to allowance allocations under the Allocation Framework Rule should be evaluated with these additional factors in mind.

2021, asking them to verify and, as necessary, correct, the historic consumption data that each supplier has previously certified as true, accurate, and complete in accordance with 40 CFR 98.4(e)(1). One of these commenters also noted that in the proposed rulemaking, the Agency provided until December 19, 2022, for entities to recheck their data, and therefore, multiple rounds of review will occur in time for the issuance of 2024 allocations. This commenter also maintained that entities' familiarity with the processes for the generation and submission of accurate reports has increased in more recent years.

EPA maintains that when holistically compared, the dataset for HFC consumption for 2011 through 2019 is better understood and more thoroughly vetted than the dataset from 2020 and 2021, largely due to the sheer number of iterations of review, updates, and follow-up as necessary. However, this is not a primary reason underlying EPA's decision in this rule to rely on data from 2011 through 2019 to determine allowance allocations and not include data from 2020 through 2021. The commenters' arguments with respect to EPA's ability to validate and verify data from 2020 and 2021 do not outweigh the concerns about the non-representative nature of that data noted elsewhere in this section (*e.g.,* due to awareness of the mandated HFC phasedown and due to unprecedented supply chain disruptions associated with the global COVID–19 pandemic).

Commenters also argued that EPA's proposal to exclude 2020 and 2021 from evaluation of allocations starting in calendar year 2024 as a result of the COVID–19 pandemic and any associated supply chain issues unfairly penalizes companies who were able to grow and succeed in those years. These commenters contended that the pandemic and any associated supply chain issues would have affected all entities equally, and therefore their growth while others might have experienced difficulties demonstrates that supply chain issues were not insurmountable. They continued by citing EPA's statements in the proposed rulemaking that taking an average of a wider range of years is more equitable to all entities in the market, and that each entity receives its best years regardless of actions taken by other entities. Accordingly, entities who might have experienced difficulties in 2020 and 2021 would not have those years evaluated in determining allocations, but entities that were successful in those two years should have those two years evaluated for allocations as applicable.

EPA disagrees with the commenter's characterization. The COVID–19 pandemic had substantial and unprecedented impacts on the national economy and domestic and global supply chains. The impacts of the pandemic were largely unforeseen and differed geographically and across sectors in uncontrollable ways. The Agency acknowledges that some businesses fared better than others, and some even thrived, during the pandemic. However, EPA disagrees with the commenter's assertions that it would be appropriate to incorporate data influenced by the pandemic because some entities did well during those years. The Agency believes that an entity's growth or contraction during 2020 and 2021 was likely due to factors that are atypical of the pre-2020 market including the pandemic as well as knowledge of the AIM Act, and therefore it would be inappropriate to ignore the reality of the impacts. EPA does not find it to be reasonable to choose an approach with benefits that might accrue to an individual entity at the risk of distorting allowance share for the whole of allowance holders by providing a company with additional future allowances based on activity in years that are so unusual. Additionally, the Agency notes that the pandemic and related supply chain issues are only one set of reasons for why our final decision excludes 2020 and 2021 (*e.g.,* this would add significant additional disruption to the market at a time when allowances are decreasing significantly). Additionally, EPA noted in the proposal that we did not see any environmental benefit associated with changing the years used to determine allowance allocations. Comments did not change EPA's assessment.

Some commenters disagreed with EPA's view that stockpiling was occurring prior to the Allocation Framework Rule becoming effective, and that accordingly, such years should not be used in determining 2024 and later year allowance allocations. First, these commenters pointed to EPA's statement in the final rule that there is no year in which a forward-looking entity may not have been stockpiling in preparation for a restriction on HFCs or new duties that were imposed by DoC. They continued by citing that the Agency's proposed methodology of averaging mitigates the possibility of an entity receiving a large share of allocations based on a single very high year. These commenters also disputed EPA's claims that entities may have begun stockpiling in advance of the passage of the AIM Act. While the commenters did acknowledge that the AIM Act was expected to be addressed at some point in time, they contended that the passage was rapid and unexpected after very little action in most of 2020 with no advance warning that the passing of the AIM Act would be so sudden in late 2020; therefore, entities would not have had time to stockpile. Additionally, these commenters cited data released by EPA's GHGRP showing that the net supply of HFCs increased between 2011 and 2020, but that the net supply of HFCs in 2020 was actually less than the supply in 2019. They posited that any fluctuations in 2020 and 2021 activity are attributable to their changing business models to meet increased aftermarket consumer demand, rather than stockpiling. Lastly, these commenters noted that any concerns the Agency may have about stockpiling can be innately mitigated by the proposed averaging approach, where one single high year's production or import activity would not result in an entity receiving a large share of allocations.

EPA disagrees with the commenters that entities would not have had time to stockpile. As described earlier in this section of the preamble, producers and importers of regulated HFCs were well aware of the phasedown of HFCs prior to the AIM Act's enactment. The Agency has reviewed updated GHGRP data through 2021,[14] and notes that both the net supply of AIM-listed HFCs and the imports of AIM-listed HFCs, increased at rates that are unlikely to be explained as changing business models to meet increased aftermarket consumer demand. By commenters' own views, if import activity in 2020 when compared to 2019 were representative of changing business models where the net supply including imports of HFCs decreased slightly, one could expect within reason, a subsequent increase in imports between 2020 and 2021. This would reflect an increase to account for the decrease in 2020 along with a reasonably small increase to account for the needs of the industry due to supply chain issues in 2020. However, given the increase specifically with respect to imports in 2021, which amounted to approximately 215 percent of the 2020 value (represented in $MMTCO_2e$, which is the same as Million Metric Tons of Exchange Value Equivalent (MMTEVe)), the Agency maintains that this year was not representative of any normal or changing business model, nor would it account for any unmet lingering needs

[14] *https://www.epa.gov/ghgreporting/ghgrp-data-relevant-aim-act.*

from 2020. This percentage increase is about the same when comparing 2021 to the annual reported values in 2018 and 2019 (aggregated in MMTEVe). As noted elsewhere in the preamble, when evaluating year over year fluctuations in HFC import activity from GHGRP between 2011 and 2021, the next highest year over year increase was between 2014 and 2015 (approximately 167 percent), with more recent pre-pandemic years, *i.e.,* between 2015 and 2019, showing a maximum year over year increase between 2016 and 2017 of approximately 120 percent. The Agency also maintains that 2020 import activity was also atypical, *i.e.,* import levels were almost equal to 2019 import activity, even with the various effects of COVID–19. Second, the Agency is aware of several entities with extremely limited or no bulk HFC import history who imported (or attempted to import) regulated HFCs into the United States for the first time in calendar year 2021, or who appeared to have exited the HFC import market in and around 2020 that began importing HFCs again in 2021, further supporting concerns that import activity in 2021 was atypical based on the then-imminent restrictions on production and consumption. The commenters have provided no evidence, including explanations of their own business plans, that could attribute this type of growth due to demand, and it is the Agency's view that changes to business models were a response to the AIM Act's pending restrictions on production and imports of regulated substances. EPA cannot change its technical analysis of data based solely on unsupported assertions from commenters stating that stockpiling is not a legitimate concern.

As noted earlier in this section, given the level of Congressional interest and activity, it is likely that some entities increased their production and imports to stockpile HFCs in advance of anticipated restrictions on production and import of regulated substances. Lastly, the Agency disagrees that stockpiling concerns can be simply resolved by averaging. In the case that both 2020 and 2021 would have been two of the three high years used in considering allocations, averaging exacerbates, rather than mitigates, the Agency's concerns that an entity may receive a disproportionately large amount of allowances. It would also fail to mitigate concerns about entities that began importing in 2021, or reimporting after apparent exit from the market, ahead of the HFC phasedown.

One commenter claimed that EPA's statements have been inconsistent. The commenter alleged that in the Allocation Framework Rule, EPA stated that the methodology starting in 2024 could change; however, the commenter contended that the proposal for this rulemaking states that using 2011 through 2019 data aligns with stakeholder expectations. The commenter asserted that EPA should not disfavor companies who expected that the Agency might update the date range to reflect more recent data. This commenter also alleged that one of the Agency's proposed approaches for entities who had received allowances previously as new market entrants, *i.e.,* evaluating import data in 2022 or 2023, also innately excludes 2020 and 2021, thereby creating an equity and fairness issue.

EPA disagrees that our statement in the Allocation Framework Rule stating that the allocation methodology could change is in conflict with EPA deciding to use a substantially similar methodology. The Allocation Framework Rule stated that EPA ''intends to develop another rule before allowances are allocated for 2024 that may alter the framework and procedure for issuing allowance allocations established in this rule,'' (86 FR 55129). It did not state that EPA would definitively change the framework or methodology in the future, and it did not indicate that any particular change would be forthcoming, so any ''expectation'' would necessarily have had to be speculative. The proposed rulemaking for this rule was developed based on our consideration of whether to continue the same methodology or adopt a variety of alternative methodologies, including some that were different from the approach taken in the Allocation Framework Rule. EPA's proposed rulemaking provides a detailed discussion of varying alternative methods the agency considered (87 FR 66376–66381). The Agency has concluded, after careful consideration, that maintaining a methodology substantially similar to that used for 2022 and 2023 is the best approach. As noted elsewhere, the Agency's conclusions are in part based on the Agency's intent of providing a smooth transition from HFCs through the next phasedown step, and in part on the conclusion that using the same methodology from the Allocation Framework Rule will provide continuity between two stepdown periods. Using the same time period will also enable prospective allowance recipients to estimate on an earlier timeframe their anticipated allocation and plan accordingly. Entities would generally have more specific insights on what proportion of available production and consumption allowances they would be allocated as a result of the Agency's previously established methodology and calculations.

The Agency also disagrees with the commenter's notion that there is a fairness and equity issue created by our proposed treatment of entities who received allowances as new market entrants. As stated elsewhere in the preamble, most new market entrants are, as their name suggests, new to the HFC import market and would not reasonably be expected to have any import activity in 2020 or 2021. To be eligible as a new market entrant, an entity had to not have previously been allocated allowances by EPA. For almost all entities, this meant that the entity had no previous HFC import history. New market entrants were allocated allowances to import HFCs starting in calendar year 2022. The Agency's rationale for its approach with respect to new market entrants is fundamentally different than the question of what years of historic data the Agency will consider in allowance allocations. The allocation approach, and Agency's rationale, for new market entrants is addressed elsewhere in this preamble.

With respect to using historic production and consumption data, one commenter asserted that the Agency should not deduct exports in its determination of each company's consumption. The commenter contended that this approach is not compelled by the AIM Act, and furthermore, this approach does not align with EPA's intent to reflect the prior business activity of entities while minimizing disruption as a result of a new regulatory program. The commenter views deduction of exports as punitive towards companies, that in the past, served to expand U.S. export markets. The commenter suggested that for the calendar year 2024 through calendar year 2028 time period, EPA should determine each company's proportional market share based on gross imports and gross exports during the applicable historic time period. Alternatively, the commenter suggested that the Agency increase the allocations for affected companies for calendar year 2024 through calendar year 2028 to adjust for the exports that were excluded from allocations made in accordance with regulations finalized through the Allocation Framework Rule.

EPA disagrees with the commenter's arguments. To the extent that the commenter is raising concerns about the allocation methodology finalized in the Allocation Framework Rule for allocation of calendar year 2022 and

2023 allowances, that cannot be properly raised in the context of this rulemaking. EPA codified regulations outlining how the Agency would calculate allocation levels as a result of notice and comment rulemaking (86 FR 55116). EPA's regulations in 40 CFR 84.11(a) make clear that EPA will look to a company's consumption amounts in determining market share. The definition of ''consumption'' in the AIM Act mentions both imports and exports and provides that the quantity of regulated substances exported from the United States is to be subtracted from the quantity produced and imported in the United States. The time to comment and challenge the allocation methodology of the Allocation Framework Rule has passed, and the Agency is not herein revisiting allocation of calendar year 2022 or 2023 allowances.

To the extent the commenter is arguing that EPA should not wholly subtract exports when considering a company's historic consumption activity under the new methodology being finalized herein for allocation of calendar year 2024 through 2028 allowances, EPA has decided it is appropriate to look holistically at a company's consumption activity, and not import and export activity in isolation. The statutory scheme phasing down HFCs in the AIM Act measures percent reductions from a consumption baseline and places restrictions on the amount of consumption that can occur within a given year within the United States. The AIM Act and the resultant definitions in 40 CFR 84.3 are clear that exports must be excluded in evaluating consumption activity. As explained elsewhere in this preamble, EPA has determined to base allocation of consumption allowances on historic consumption activity. However, the Agency has also created mechanisms that account for and acknowledge the subtraction of export from consumption. Because calculation of consumption subtracts out exports, EPA established in 40 CFR 84.17 the RACA process under which entities exporting HFCs can be refunded consumption allowances subject to certain regulatory requirements. Consistent with the statutory and regulatory definitions of consumption, under the allowance allocation system that EPA is establishing in this rulemaking, consumption allowances that are expended to import or produce regulated substances are refunded if those regulated substances are later exported from the country. If EPA allocated allowances based on export activity, and such entities maintained similar export activity in future years, those entities could receive double allowances (for an allocation based on export activity plus allowances refunded through the RACA mechanism). EPA does not think such double attribution is appropriate because, among other things, it would not accurately reflect the market. Finally, EPA notes that if an entity is not allocated sufficient allowances for the amount of regulated substances it is interested in acquiring, it can either transfer for allowances to import regulated substances directly, or purchase regulated substances on the open market that have already been produced or imported without an allowance.

Relatedly, one commenter argued that EPA should allow production of regulated substances for export without expenditure of consumption allowances, so long as a producer permanently designates the regulated substance for export and the substances are in fact exported. The commenter alleges that this would allow production of regulated substances near the end of a year for export in the following year. EPA notes at the outset that this comment is outside the scope of what was proposed in this rulemaking. EPA did not propose any alterations to the fundamental activities that require expenditure of allowances and did not propose or solicit comment related to creating an exemption for regulated substances produced for export. Further, even if this comment fell within the scope of this rulemaking, EPA disagrees with the commenter's suggestion. As explained in the prior paragraph, the AIM Act is clear in establishing caps on the level of consumption that can occur each year within the country. If production occurred in one year and export occurred in another year, EPA could be over the statutory cap established in the first year under the commenter's suggested approach.

Some commenters, as a part of a broader set of input on how the Agency could address anticompetitive behaviors (discussed elsewhere in the preamble), suggested in their individual comments that the Agency reduce allowance amounts for entities who have been found to be engaging in unfair trade practices, *e.g.,* circumvention of applicable AD/CVDs. For example, the Agency could consider evaluating a percentage of their historical import activity for allocations, rather than the entire three-year average. Commenters also suggested that entities who import HFCs circumventing applicable AD/CVDs could have their future allocations decreased by the same number of their unused allowances in the previous year.

As further explained in the following paragraph, EPA has determined that it is not appropriate to adjust for any unfair trade practices that have happened in the past when calculating allowance allocations. As noted, EPA is finalizing a methodology of allocation that is based on historic production and consumption from 2011 through 2019, which are years before the AIM Act was enacted and before EPA began the Congressionally-mandated phasedown of HFCs.

However, EPA emphasizes that the Agency is concerned about companies not complying with other similar HFC trade provisions, such as AD/CVDs, as violations of such provisions may create an unequal environment. Dumping refers to ''when a foreign producer sells a product in the United States at a price that is below that producer's sales price in the country of origin (''home market''), or at a price that is lower than the cost of production.'' [15] Foreign governments may subsidize industries by providing financial assistance to benefit the production, manufacture, or exportation of goods, thereby unfairly undercutting domestic producers. EPA has determined that the Agency is not the entity best positioned to handle these issues, and therefore has determined that it is not appropriate to account for these factors in the allocation methodology. DoC has been given statutory authority and mandates to address specific unfair trade practices that the commenter is concerned about, and DoC attempts to eliminate the unfair pricing or subsidies and the injury caused by such imports by imposing additional duties, termed countervailing subsidy duties. The amount of the subsidies the foreign producer receives from the foreign government is the basis for the subsidy rate by which the subsidy is offset, or ''countervailed,'' through these higher import duties. Anti-dumping and countervailing duties are two ways that the United States addresses dumping and unfair foreign subsidies. The U.S. government can require that foreign companies involved in dumping and/or benefiting from subsidization are charged antidumping and/or countervailing duties. U.S. Customs and Border Protection (CBP) enforces AD/CVD laws by collecting the applicable cash deposits, administering AD/CVD entries, assessing and collecting final

[15] ''U.S. Antidumping and Countervailing Duties.'' *Trade.gov,* International Trade Administration. Available at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

AD/CVD, and enforces AD/CVD on imports that evade AD/CVD orders. This helps negate the value of the dumping/subsidization for foreign manufacturers and creates a fairer competition for manufacturers in the United States. In findings of dumping, DoC issues an order that requires importing entities to pay AD/CVD for goods covered by the order (*e.g.,* in this case, certain HFCs and HFC blends). This remedy means that an effort by EPA to address dumping, in addition to being outside EPA's expertise, could have the effect of overcorrecting the unfair trade practice. Additionally, efforts from EPA to remedy unfair trade practices by way of allowance adjustments would require the Agency to determine details about factors including but not limited to scope, timing, appropriate premiums, rationale, and implementation criteria that EPA does not have sufficient information at this time to develop.

Accordingly, as discussed above, EPA is finalizing its proposed approach to base production allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of production of regulated substances between 2011 and 2019 as reported to the GHGRP. EPA is finalizing its proposed approach to base consumption allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of consumption of regulated substances between 2011 and 2019. If an entity does not have three years of data, EPA will take the average of the years between 2011 and 2019 for which each company imported HFCs.

Consistent with the regulations established in the Allocation Framework Rule,[16] EPA will allocate consumption allowances to entities that imported bulk substances according to levels of historic consumption from 2011 through 2019 as reported to the GHGRP. Consistent with EPA's current practice, allowances will go to entities that ''imported,'' meaning the entities responsible for the ''land[ing] on, bring[ing] into, or introduc[ing] into'' the United States (see 40 CFR 84.3 (definition of ''import'')). This definition codified in 40 CFR 84.3 and pertinent to the phasedown of HFCs under the AIM Act is different than, and distinct from, what entities may meet EPA's regulatory definition of ''importer'' for an individual shipment. This approach ensures that, for purposes of allowance allocation, only one entity receives credit as the ''entity that imported'' particular HFCs, as opposed to looking at any entity that could meet the definition of ''importer'' for an individual shipment, which could result in double, triple, or quadruple allocation of allowances since a number of entities could potentially be considered ''importers'' for an individual import action, even if they were not the entity that imported the regulated substance, such as customers of the entity that imported and others indirectly related to the import activity. EPA's approach also mirrors the AIM Act's phasedown provisions by distributing allowances to those entities that historically conducted the same activities now prohibited absent the expenditure of allowances (see 42 U.S.C. 7675(e)(2); 40 CFR. sections 84.5(a)(2), 84.5(b)(2)). Allowances are required for the act of importing, not subsequent transport, blending, or sale of regulated substances that have already been produced in or imported into the United States.

EPA will continue to rely on production, import, export, destruction, and transformation data reported to GHGRP for entity-specific consumption data.[17] It is critical to develop an approach to allocation that helps ensure that only one entity receives credit as the ''entity that imported'' particular HFCs. Historically, EPA anticipates that only a single entity has reported import activity to GHGRP, since there is a single entity, which is ''the person, company, or organization primarily liable for the payment of any duties on the merchandize'' required to report a bulk HFC import to GHGRP (see 40 CFR. 98.416(c) (requiring ''each bulk importer of fluorinated GHGs . . . [to] submit an annual report that summarizes its imports at the corporate level'' if above specified thresholders); 40 CFR 98.6 (defining ''importer'')). That entity's requirement to assign a designated representative for GHGRP reporting purposes does not mean that the designated representative or alternative designated representative is the entity that is required to report to the GHGRP. *See* 40 CFR 98.4. However, EPA is concerned that entities who took limited if any responsibility for the import, including responsibility for complying with EPA reporting requirements, may attempt to report import activity to GHGRP now that EPA has begun implementing the AIM Act and EPA allocates allowances based on historic import activity. EPA views this as problematic since if, for example, both a consignee and an importer of record received credit for the same historically imported HFCs, this would double-allocate allowances for that single shipment. This double-allocation would distort the allowance system such that it was not a best available reflection of historic patterns. For purposes of determining historic import levels, EPA intends to rely on the entity that has historically reported the imports for a shipment to GHGRP. If two or more entities reported the same import to GHGRP in prior reporting years, EPA would include that import in the allowance allocation calculation of the entity that first reported the import to GHGRP or assigned an employee or an authorized third party to report to GHGRPon the entity' behalf as a designated representative. EPA considers historic reporting to GHGRP as indicative of the entity that took primary responsibility for complying with EPA requirements for that import and considers this a critical data point to determining who to credit that import to.

For new market entrants that were allocated allowances in 2022 and 2023, EPA proposed an approach to allocate consumption allowances such that new market entrants would see an equivalent reduction in allowances between the 2022–2023 and 2024–2028 timeframes as general pool allowance holders. Since new market entrants did not receive allowances based on prior import history between 2011 and 2019, and many new market entrants have no such historic import activity, EPA proposed to create a value that can serve as a stand in for an average of the three highest years of consumption of regulated substances between 2011 and 2019 for each new market entrant. This approach is intended to ensure that new market entrants and general pool allowance holders would experience the same proportionate reduction between their 2023 allocation and their 2024 allocation after accounting for the stepdown caps and other factors, such as the number of application-specific allowances allocated, finalized changes to the baseline based on corrected historic reporting, or changes in the

[16] EPA is finalizing a minor modification to the existing regulatory text in 40 CFR 84.11(a) to clarify EPA's position established in the Allocation Framework Rule that allowances are allocated to entities that have historic import activity.

[17] The GHGRP requires various facilities and suppliers to annually report data related to GHGs to EPA (see 40 CFR part 98). 40 CFR part 98, subpart OO, ''Suppliers of Industrial Greenhouse Gases,'' is the section relevant to reporting on HFC production and consumption. Because the HFCs listed as regulated substances under the AIM Act are industrial GHGs, EPA has collected data relevant to HFC production and consumption as defined under the AIM Act. Further discussion of the GHGRP can be found in the notices and dockets related to the Allocation Framework Rule.

number of entities who receive allowances.

The vast majority of commenters on EPA's proposed treatment of new market entrants supported EPA's approach, *i.e.,* the creation and usage of a stand in market share value. One of these commenters agreed with EPA's approach, but also asked EPA to consider issuing allowance allocations to previous new market entrants for calendar year 2024 through calendar year 2028 at the same level as 2022 and 2023. This commenter noted that the original allowance allocations to new market entrants were not large to begin with and therefore the total effect on the general pool would be small, and decreasing the allocations to these entities may potentially hamper their effective use.

After considering these comments, EPA maintains our view from the proposed rulemaking that it is appropriate for new market entrants to see an equivalent reduction in allowances between the 2022–2023 and 2024–2028 timeframes as general pool allowance holders. General pool allowance holders are entities that have historically been active in the HFC import market and have comprised the business sector supplying imported HFCs into the domestic market. As noted elsewhere, a priority for EPA in developing the allocation methodology has been to provide for a smooth and seamless phasedown as much as possible. Providing a greater number of allowances to new market entrants in a manner that does not account for the nationwide step down in HFC consumption would take away a relative share of allowances from the entities that have historically comprised this import business. The commenter has not provided a compelling reason why such an approach would be beneficial or reasonable as opposed to EPA's approach which would treat new market entrants equally to entities with historic imports. EPA does not agree with the commenter's claim that allocating at original allowance levels to new market entrants would have a small total effect on the general pool. On the contrary, new market entrants received in aggregate approximately 2.5 percent of the total consumption cap in 2023. If EPA were to allocate the same allowance totals to new market entrants in calendar year 2024 it would result in these entities receiving approximately 3.5 percent or greater of the total consumption cap. The commenter argued that decreasing the allocations to new market entrants may potentially hamper the effective use of allowances, but the commenter did not provide any rationale or examples of why the commenter thought this would be the case. All allowance recipients will likely be facing a situation where they are allocated fewer allowances starting with calendar year 2024 than they received previously given the Congressionally-mandated phasedown of regulated substances. It is unclear to EPA why new market entrants would struggle more due to that phasedown than other entities and therefore why new market entrants should receive different, and arguably, preferential treatment over historic importing entities. Multiple entities that historically imported HFCs received a lower allocation amount of calendar year 2023 allowances than new market entrants, so there is no available argument that new market entrants have lower allocation amounts generally nor that there is some de minimis threshold under which EPA should not allocate. When facing lessening allowance allocation levels, companies may need to be more creative in their business models to make effective use of HFC consumption allowances, but there are many existing practices that could be employed to take full advantage of the level of allowances that are allocated. One such model is a limited container load model which would entail combining allowances with another entity who may be in a similar situation. Additionally, the restriction that new market entrants may not transfer allowances received as part of those initial provisions will no longer apply beginning in 2024, which may be useful to certain entities needing or desiring additional allowances.

One commenter objected to EPA's proposed treatment of new market entrants, stating that the Agency should not treat these entities in the same manner as historic importers for the purposes of allowance allocations past calendar year 2023. This commenter recommended that EPA conduct an audit of the performance and operations of each new market entrant prior to any further allowance issuance, and even if these entities were found to be legitimate and fully compliant with EPA's reporting regulations, the Agency should prioritize the allocation of HFC allowances to historic importers.

EPA does not agree with the commenter's general notion that the Agency should treat new market entrants in a lesser manner than entities with historic imports. EPA is sympathetic to constraints that are associated with the likely tightening market as the HFC phasedown proceeds, and already finalized regulatory provisions that allowed for a one-time opportunity for new market entrants to apply for, and if eligible receive, allowances. As explained in the Allocation Framework Rule, EPA determined that it was appropriate to facilitate participation by new market entrants in the HFC import business at that early stage of the mandated phasedown. Given the AIM Act contemplates continued production and consumption of HFCs following the mandated phasedown of HFC production and consumption by 85 percent in the United States, EPA created a one-time opportunity for new market entrants to apply for a modest amount of consumption allowances to mitigate the potential for market barriers to companies looking to newly enter the HFC market and allow businesses experiencing such challenges to import HFCs directly without the additional step of purchasing allowances. After finalizing this opportunity in the Allocation Framework Rule and allowing new market entrants into the HFC allowance system, EPA does not see, and the commenter has not provided, a compelling reason to exclude these entities from the allowance system starting in 2024, after issuing them allowances in 2022 and 2023. All entities who received consumption allowances as new market entrants were subject to the regulatory application requirements in 40 CFR 84.15(d)(2), and the Agency applied an equal amount of scrutiny in evaluating each of their applications to ensure that certain criteria were met. Accordingly, new market entrants already demonstrated that they met regulatory criteria that were designed and finalized in the Allocation Framework Rule to determine eligibility to enter the allowance system. EPA disagrees that it is necessary or appropriate for the Agency to conduct an audit of the performance and operations of each new market entrant prior to any further allowance issuance. As noted, new market entrants were required to meet a list of regulatory requirements and submit various planning documents to EPA to be eligible for new market entrant allowances. EPA's review included an assessment of whether new market entrant applicants had a realistic plan to import HFCs were allowances granted. The commenter does not provide information on what type of audit on performance and operations would be appropriate and also provides no rationale as to why this would be appropriate to apply to new market entrants, but not other allowance recipients. If a new market entrant is not compliant with regulatory requirements,

EPA has tools available to deal with that noncompliance, including administrative consequences and any potentially appropriate enforcement action. The commenter did not provide a model or details on how the Agency might prioritize the allocation of HFC allowances to entities with historic imports over new market entrants, and given the limited pool of consumption allowances available and high interest in allowance allocations, EPA can only understand this call for prioritization to mean that new market entrants would receive no allowance allocation. As explained previously, EPA does not think such an outcome is appropriate.

Accordingly, EPA is finalizing the proposed approach to determine allowance allocations for new market entrants. As explained in the proposed rulemaking, EPA will determine a stand-in value based on the number of allowances allocated to each new market entrant in calendar year 2023 (which is identical to the number of allowances allocated for calendar year 2022) and the percent reduction all general pool allowance holders experience in calendar year 2023 relative to the average of their three highest years of consumption. For reference, each general pool allowance holder received allowances at a level 32.1 percent below their individual high three-year average in calendar year 2022 and at a level 31.8 percent below their individual high three-year average in calendar year 2023 due to the differing number of application-specific allowances that were allocated on September 30, 2022. For the purposes of creating a stand in value for new market entrants, EPA will divide each new market entrant's calendar year 2023 allowance value by the proportion of allowances received by general pool allowance holders relative to their high three-year average in calendar year 2023. Because general pool allowance holders received allowances equivalent to 68.2 percent of their high three-year average in 2023, a new market entrant that received 200,000 MTEVe of allowances in 2023 would be credited with approximately 293,255.1 MTEVe as the stand in for their high three-year average.

Consistent with EPA's proposal, and having received no adverse comments, EPA is also finalizing the following with respect to allocation to new market entrants. If any entity were to qualify under both the new market entrant and historic production or import methodologies, the Agency would allocate with the methodology that issues the greater number of allowances. If a company that has prior production and/or import activity acquires a new market entrant and EPA provides approval after considering what has been acquired, such as physical assets, ongoing customer relationships and history (company portfolio), or market share, the Agency will add the new market entrant's high three-year average stand-in value to the acquiring entity's high three-year average consumption value and would use this value for future allocation determinations.

After determining eligibility (see section III.C of this preamble) and entities' market share, EPA is finalizing, as proposed, to use the same steps as described in the Allocation Framework Rule (86 FR 55147) and codified at 40 CFR 84.9(a)(2) through (4) and 40 CFR 84.11(a)(2) through (4) to determine an individual entity's allocation. Independently for production and consumption allowances, EPA would add every entity's average to determine a percentage market share of production and consumption allowances, respectively, for each entity. EPA would multiply each entity's percentage market share by the total amount of general pool calendar-year allowances available to determine each entity's production or consumption allocation.

2. What other allocation methodologies did EPA consider?

As indicated in the proposal to the Allocation Framework Rule (86 FR 27150, May 19, 2021), including in the section seeking advance comment to inform future rulemakings, EPA considered the appropriateness of other ways to undertake allowance allocation beyond allocating allowances to entities based on historic production and consumption activity at no cost (86 FR 27203). In considering different allocation mechanisms, EPA considered multiple factors, including ease of implementation for both the regulated community and the U.S. government; consistency with the AIM Act; facilitating an efficient market, such as by collecting and releasing data on production, import, and inventories of HFCs; transparency and certainty for regulated entities and the public; distributional effects, such as on new entrants; responsiveness to changing market conditions (*e.g.,* companies entering or exiting the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, or supply shortages or market disruptions for specific HFCs); small business implications; minimizing the opportunity for fraud; and other factors.

The proposal for the current rulemaking contains details about a fee-based or auction system, including potential advantages as well as anticipated challenges, and for the reasons described therein, the Agency did not propose a fee-based or auction system to allocate allowances in this rule.

To facilitate our continued consideration, separate and apart from this current rulemaking, EPA invited advance comments on whether there are any current or potential future disadvantages with the currently proposed allocation system that could be addressed by an alternate allocation mechanism, as well as comments on design features or timing options for alternate allocation mechanisms that EPA could consider were the Agency to determine at a future point that changes are warranted. Individual comments are available in the docket to this rulemaking, and for information purposes, EPA is providing a summary of key points, though the Agency is not taking any final action based on these advance comments at this time.

A small number of commenters supported the general ideas and concepts of a fee-based or auction system, citing that such a system could, among other things: generate revenue to support continued research and development of, and also facilitate a faster transition to, climate-friendlier alternatives; help subsidize increases in the production capacity of alternatives; lower costs of HFCs for end users; provide better market transparency; decrease or eliminate fraud; and, eliminate the need for onerous recordkeeping. One of these commenters provided general guiderails for how a fee-based or auction system could be implemented. Generally, the comments in support of a fee-based or auction system were high level and provided minimal justification, rationale, or details on how to support their conclusions.

The majority of commenters opposed a fee-based or auction system, citing that such a system would destabilize the HFC market in the following ways: market pricing to produce or import HFCs would become artificially inflated with the cost potentially passed onto consumers; business continuity would be at a significant risk as there is no guarantee that the most efficient entities would receive allowances; availability of needed products to reclaimers would be negatively impacted; domestic production of goods containing HFCs may shift outside of the United States at the cost of domestic jobs and manufacturing; and, domestic interests may not be protected if additional foreign entities were allowed to

participate in such a system. Two commenters in opposition to a fee-based or auction system further argued that the AIM Act provides no express or implied authority for EPA to auction or to charge a fee for allocations or allowances.

One of these commenters also contended that the Agency must consider and respond to comments concerning AIM Act authority to impose a fee-based or auction system for allowances issued under the Act. The commenter contended that subsection (k) of the AIM Act, which states that section 307 of the CAA applies, specifically that the CAA requires that ''[t]he promulgated rule shall . . . be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.'' The commenter asserted that while they provided extensive input on a fee-based or auction system during the public comment period for the Allocation Framework Rule, the Agency did not respond to those comments. The commenter concluded that EPA cannot avoid responding to comments in a proposed rulemaking (both the Allocation Framework Rule as well as the proposed rulemaking for this final rule) that explicitly raises the issue of allocating allowances through a fee-based or auction system simply by the Agency asserting that it is only inviting ''advance comments,'' specifically with respect to EPA's implementation of its existing AIM Act authority for such a system.

As stated in this preamble and the proposed rulemaking, EPA is not pursuing a fee-based or auction system for allocation of allowances in this rulemaking. The proposal for the current rulemaking contains details about a fee-based or auction system, including potential advantages as well as anticipated challenges, and for the reasons described therein, the Agency did not propose a fee-based or auction system to allocate allowances in this rule. Comments on the auction system thus are not significant to this rulemaking. If EPA were to consider auctions in the future, the public would have an opportunity to comment on it at that time.

3. What did EPA consider in developing its final rule as to the appropriate entities to be allocated allowances?

As outlined in section III.B.1 of this preamble, EPA will be using a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate new market entrants that received allowances pursuant to 40 CFR 84.15 on March 31, 2022. In developing this final approach, EPA considered whether to allocate production and consumption allowances to entities beyond those that have historic production and consumption.

As part of this deliberation, EPA considered whether allowance allocations can be used to incentivize certain behavior such as to maximize reclamation and minimize releases of regulated substances. Some commenters to the Allocation Framework Rule encouraged EPA to issue allowances to reclaimers. The result of this suggestion could be that reclaimers have allowances available to directly import virgin regulated substances that they could use to rebalance refrigerant blends that are slightly off specification after reprocessing recovered refrigerant. The allowances could be transferred to another entity to import or produce on the reclaimer's behalf or could be used to ease a reclaimer's ability to purchase regulated substances from another entity.

Many commenters on this particular issue expressed that issuing allowances to reclaimers who are not eligible under the proposed methodology is not a meaningful way to increase opportunities for reclamation. One commenter provided general support of granting consumption allowances to EPA-certified reclaimers on a proportional basis to the exchange value of the refrigerants they reclaim or destroy to foster smaller reclaimers who may not be prepared to import on a larger scale. One commenter suggested that EPA issue allowances to EPA-certified reclaimers to support rebalancing and increase the availability of additional material available to support industry needs; the commenter continued that considering the data available to EPA, public comments from various stakeholders including reclaimers, and the Agency's experience in implementing the HFC phasedown, EPA has asserted no specific basis for rejecting the issuance of EPA-certified reclaimer allowances. The commenter argued that issuing EPA-certified reclaimer allowances would foster opportunities for HFC reclamation, thereby allowing more material to be returned for sale from rebalancing that would otherwise be sent for destruction and not used. The commenter also claimed that EPA has made no showing that it has meaningfully considered the requests of EPA-certified reclaimers with respect to issuing such allowances, thereby deviating from one of the AIM Act's mandates. Finally, one commenter suggested that any allowances used in pursuit of maximizing recovery and reclaim would be significantly more effective if allocated directly to certified reclaimers due to existing rigorous reporting obligations, rather than a general incentive for the general public that may not have experience in the reclamation field.

EPA does not view issuing allowances to reclaimers that are not eligible based on the methodology EPA is finalizing in this rulemaking as a necessary way to increase opportunities for reclamation. If EPA were to issue allowances specific to reclaimers based on some specialized status, EPA would reduce the number of allowances available to other general pool allowance holders, which includes certain reclaimers. EPA recognizes that reclaimers may need access to some amounts of at specification HFCs to rebalance reclaimed blends, but our understanding is that there are generally available mechanisms to access regulated substances without directly importing them. EPA notes that some reclaimers have historically imported HFCs and those reclaimers will receive allowance allocations under the methodology finalized in this rule based on historic consumption levels. Commenters have not provided a compelling argument as to why reclaimers that did not import HFCs have a particularized need to do so now, nor did commenters provide a defensible basis for how EPA would determine what quantity of allowances would be needed for rebalancing. Rather, EPA thinks it is most appropriate to continue to allocate to entities that have historically imported in order to minimize market disruptions. Even if certain reclaimers have a new need to directly import HFCs, EPA provided all entities, including reclaimers, the opportunity to enter the HFC import business through applying as a new market entrant to the set aside pool of allowances in accordance with 40 CFR 84.15. Several reclaimers applied for, and received, new market entrant allowances from the set-aside pool for calendar years 2022 and 2023. These reclaimers will be treated in a manner consistent with the previous discussion in section III.B.1 of this preamble. Further, HFCs can be purchased on the open market from other allowance holders, or other distributors and suppliers. The commenters have not explained in any detail why these three options are not sufficient to accommodate reclaimer needs, aside from general and conceptual arguments that may be

divorced from on the ground experiences and practice. The Agency also notes that previously reclaimed HFCs that meet the requisite technical standard for purity (*i.e.,* Air-Conditioning, Heating, and Refrigeration Institute (AHRI) 700–2016) for refrigerants may be used in lieu of virgin materials for the purposes of rebalancing, and commenters have not explained in any detail any considerations for how or why this additional option would be insufficient. Commenters have also not meaningfully engaged with the point that the phasedown of HFCs increases opportunities for use of reclaimed HFCs by restricting the amount of newly produced and imported HFCs that can enter U.S. commerce. Commenters have not explained why this increased market demand is not sufficient, nor why the increased market demand would necessitate or justify priority access to consumption allowances for reclaimers.

EPA disagrees with one commenter's characterization that by not issuing allowances to reclaimers, the Agency is not following through on the AIM Act's mandates, specifically subsection (h)(2)(A), which states that ''[i]n carrying out this section, the Administrator shall *consider* the use of authority available to the Administrator under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants'' (emphasis added). As discussed in the proposed rulemaking, the Agency need not determine in this rulemaking whether this provision applies to this action—much less whether it establishes a requirement that may apply to other actions taken under the AIM Act—because even assuming that the commenter is correct that this provision creates a statutory obligation that applies to this rulemaking, the Agency has undertaken such consideration throughout this rulemaking process. Nothing in this statutory language requires that the Agency reach a certain result or use a certain mechanism; rather, it requires no more than that the Agency consider the potential to increase opportunities for reclamation of regulated substances used as refrigerants—and the Agency has done that in the context of this rulemaking, including in its development of the proposed rulemaking and in consideration of these comments and potential responses to them.

Moreover, in a separate rulemaking, the Agency is developing a proposed rulemaking for HFCs and their substitutes for the purposes of maximizing reclamation and minimizing releases of HFCs from equipment. EPA issued a notice of data availability and draft report published in the **Federal Register** on October 17, 2022 (87 FR 62843) on the current United States HFC reclamation market and requested comment. EPA also hosted stakeholder meetings on November, 9, 2022, and March 16, 2023, to provide information on the upcoming rulemaking, as well as to provide an opportunity for stakeholder input and questions related to managing use and reuse of HFCs and substitutes. The agency also has been meeting with stakeholders individually and by participating in industry meetings. Comments submitted on the draft report, along with any input received during the stakeholder meetings and through other interactions with relevant stakeholders (*e.g.,* EPA participation in trade association meetings), will inform the future AIM Act subsection (h) proposed rulemaking.

One commenter argued that EPA should allocate to HVAC original equipment manufacturers (OEMs) because: an HVAC OEM allocation would substantially lower OEM and consumer costs and would reduce the chance of HFC market manipulation; in the absence of allocation, the HFC market could impede the market acceptance of alternatives; and an HVAC OEM allocation would encourage a more orderly HFC phasedown by placing appropriate responsibility on OEMs to transition to lower climate impact refrigerants, reduce charge volume, and promote more refrigerant recovery/reclamation. The commenter cited the Agency's allocation framework for application-specific end uses as demonstrating that an HVAC OEM allocation would be feasible.

The commenter did not provide details for how such an allocation category could, or should, be implemented. Additionally, the creation of such an allocation category would require the Agency to determine details about scope, eligibility, and implementation that EPA does not have sufficient information at this time to develop. The commenter also does not provide anything beyond a conclusory rationale as to why it would be appropriate to allocate allowances to HVAC OEMs, but not other OEMs. EPA's chosen allocation methodology that is being finalized in this rule distributes allowances to entities that historically conducted the same activities now prohibited absent the expenditure of allowances. The AIM Act and implementing regulations provide that ''no person'' shall ''produce'' or ''consume'' HFCs ''without a corresponding quantity of production or consumption allowances'' (see 42 U.S.C 7675(e)(2); 40 CFR 84.5(a)(2) and 84.5(b)(2)). The Allocation Framework Rule makes clear that the prohibition on ''consumption'' without corresponding allowances applies specifically to the act of import (see 42 U.S.C. 7675(b)(6) (defining import as landing on, bringing into, or introducing into the United States); 40 CFR 84.3 (same); 40 CFR 84.5(b)(1)(i) (requiring consumption allowances ''at the time of the import'')). Accordingly, the regulations in 40 CFR 84.5(b)(1)(i) prohibit importing HFCs without corresponding allowances, and state that consumption allowances must be expended ''at the time of import.'' In short, allowances are required for the act of importing, not subsequent use of HFCs that have already been produced in or ''imported'' into the United States. EPA notes that OEMs that have historically directly imported will receive allowance allocations under the methodology finalized in this rule based on historic consumption levels. Commenters have not provided a compelling argument as to why OEMs that did not historically import HFCs have a particularized need to do so now, and rather EPA thinks it is most appropriate to continue to allocate to entities that have historically imported to minimize market disruptions. If certain OEMs that had not previously imported HFCs had wanted to enter the HFC import business, there was an opportunity to do so as a new market entrant to the set aside pool of allowances in accordance with 40 CFR 84.15. The creation of an OEM allocation category would have also required an accompanying proposal or solicitation of comment, neither of which were included in the proposed rulemaking, and as previously noted, the creation of such an allocation category now would require the Agency to determine details about scope, eligibility, and implementation that may be informed by a range of market data and other records to which the Agency does not currently have access. EPA also lacks information on how such an allocation category would holistically affect the regulated industry, including small businesses.

One commenter asserted that if EPA intends to require allowances to import blends containing regulated substances, allowances must be allocated to the entities who are importing or combining HFCs to create HFC blends, and not to the entities who are producing or importing the individual components of the blends. Specifically, the commenter

expressed concern that under the proposed allocation methodology, companies that blend HFCs will suffer an unfair and economically devastating mismatch between entities that receive allowances and entities that ultimately bear the burden of the allowance system.

To be clear, importing a blend of chemicals that includes regulated substances requires expending allowances to account for the regulated substances within the blend. EPA is making alterations to the regulations to further clarify and codify the Agency's existing position on this issue. Those changes and the rationale behind them are further outlined in section V.C. of this rule. As noted in the prior comment responses, EPA's chosen allocation methodology that is being finalized in this rule distributes allowances to entities that historically conducted the same activities now prohibited absent the expenditure of allowances. If an entity has historically imported a blend and reported that import as required to GHGRP (as is the case for this particular commenter), that entity will be eligible to receive allowances. An entity that does not directly import blends or individual HFC components, but combines HFCs obtained on the domestic market to create an HFC blend, is not eligible for allowances, although they could have applied as a new market entrant for set-aside allowances previously in accordance with 40 CFR 84.15. An entity not importing HFCs, but domestically creating an HFC blend, can continue to undertake that behavior without any need for allowances. The commenter has failed to provide reasons as to why an allowance allocation to such an entity is needed. The commenter states that ''companies that blend HFCs will suffer an unfair and economically devastating mismatch,'' but does not explain why that would be the case. Without compelling arguments or evidence to support a contrary approach, EPA is finalizing the allocation methodology as proposed.

As noted previously in this section, EPA did not propose to establish, and is not finalizing, a set-aside pool of allowances beyond what was created in the Allocation Framework Rule and was allocated March 31, 2022. EPA recognizes that the goal of the AIM Act is to establish a national phasedown of HFC production and consumption by 85 percent by 2036, and therefore, while the Agency did offer a one-time opportunity of a set-aside pool of allowances for calendar year 2022 and 2023, EPA explained in the proposed rulemaking that it does not view further allocations for a set-aside pool and/or allowances for entities who have not previously produced and imported HFCs as supporting the AIM Act's objectives, and accordingly is not establishing a new set-aside pool of allowances.

Several commenters expressed support of EPA's proposal to not establish a set-aside pool of allowances for calendar years 2024 through 2028. However, other commenters suggested that EPA should establish a set-aside pool during this period for entities to: develop new, innovative, or low-GWP HFC substitutes (for additional new market entrants as well as existing allowances holders seeking to develop alternatives for existing equipment); incentivize environmentally beneficial activities such as reclamation or recovery; provide a margin of safety pool for the semiconductor industry; or, to ensure against historical and current barriers that entities wishing to continue or enter in the HFC market may encounter, *e.g.,* social inequities or disproportionate allocations to historic entities. One of these commenters suggested establishing a set-aside pool of allowances at 7.5 MMTEVe, with unused allowances being redistributed to the general pool.

With respect to the suggestion to establish a set-aside pool to develop new, innovative, or low-GWP substitutes, commenters did not provide a clear range of entities or activities that would meet the suggested category, other than being existing or prospective suppliers of HFCs or HFC substitutes. The Agency's views on issuing allowances to reclaimers that are not otherwise eligible based on the final methodology for 2024 through 2028 has been discussed elsewhere in this rule and, for the reasons explained in those discussions, EPA is not finalizing such a set-aside pool to incentivize reclamation. As for creating a margin of safety pool specifically for the semiconductor industry, the Agency reiterates that we did not propose to change the methodology for issuing application-specific allowances, and the existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Allocation Framework Rule. Further, EPA has not heard concerns with sufficient specificity to believe that there is a need for a set-aside pool specific to the semiconductor industry *in addition* to the allowances already provided under the application-specific allocation. In applying for application-specific allowances, all eligible entities can provide information on unique circumstances facing their businesses, which are taken into account in the Agency's calculation of application-specific allowance allocations.

As part of the Allocation Framework Rule, EPA conducted a preliminary review of entities that had previously imported HFCs and that were HCFC allowance holders (available in the docket for the Allocation Framework Rule) and solicited comment on whether any individuals have experienced structural barriers inhibiting their earlier access to the HFC import market, including if there was difficulty entering the HFC import market based on criteria such as business location, employment of socially or economically disadvantaged individuals, or other criteria related to business ownership, employee characterization, or business location. As explained in that rulemaking, EPA was interested in collecting the information requested to better understand whether such issues are affecting entry into this market and to explore future opportunities to ensure a more equitable marketplace. Commenters did not provide evidence or detailed information that would indicate that certain businesses have historically and could continue to experience difficulty entering the HFC market as a result of structural barriers or social or economic inequities. Our review of public comments received from the proposed rulemaking associated with this rulemaking did not yield any such records either.

Lastly, several commenters also provided suggestions for what the Agency might consider in the next allocation methodology, *e.g.,* allowance incentives for destruction and a set-aside pool that prioritizes the top performers with respect to providing recovered refrigerants to reclaimers in the previous year. Comments explicitly framed as being for consideration in future rulemakings have not been considered for this final rule and the Agency is not responding to those comments at this time.

C. How is EPA accounting for past production or import activity to determine allocation eligibility?

To be eligible to receive general pool allowances for 2024 through 2028 based on historic production and import activity (*i.e.,* for entities that produced and imported regulated substances in 2011 through 2019), EPA proposed that an entity must have produced (for production and consumption allowances) or imported (for entities only receiving consumption allowances) HFCs in 2021 or 2022. EPA had a similar requirement in the Allocation

Framework Rule, specifically requiring production or import in 2020.[18] As part of the proposal, EPA considered using a rolling set of years to confirm activity, but as explained in that rulemaking, using a rolling set of years would not provide the same stability since allowance holders could come into and out of the allocation system, thereby affecting everyone's relative share of available allowances and reducing predictability. EPA also explained that it does not want to incentivize entities in each subsequent rolling set of years' entities to continue importing or producing small quantities that would otherwise be outside the entity's plans in future years just to maintain position to receive future calendar year HFC allowances. EPA also took comment on simply basing allocations on historic reported data between 2011 and 2019, without including an additional eligibility requirement relating to whether the entity produced or imported HFCs in recent years, such as 2021 or 2022. The discussion in this section of the preamble referencing production or import activity in 2021 or 2022 is germane only to whether an entity was active in those years for the purposes of determining whether that entity is eligible to receive allowances. EPA is not evaluating the specific amounts that entities may have produced or imported in these years, and the Agency's finalized approach in confirming that entities were active in 2021 or 2022 should not be interpreted as EPA evaluating entity-specific activity in those years to inform the number of allowances that each eligible entity receives. The years that EPA is relying on to determine how many allowances each eligible receives is discussed elsewhere in the preamble. As noted in those other sections, EPA has concerns about how representative quantities produced or imported in 2021 and 2022 may be, but EPA has determined that some level of demonstrated activity in those years is still a useful metric for purposes of determining whether to allocate allowances

Some commenters supported EPA's proposal of requiring activity in either 2021 or 2022 as a prerequisite for general pool entities receiving allowances. One commenter opposed the proposed qualification, citing that such a requirement could penalize entities who are trying to maximize efficiency by outsourcing production or importation but who plan to remain in the market and service existing customers. The commenter suggested that the more relevant consideration would be whether an entity's allowances were expended in the affected years, and that if the Agency were to finalize this specific provision, that there be a way for entities to request unique consideration in the event they did not produce or import in 2021 or 2022.

EPA disagrees with the commenter. This additional eligibility requirement, that an entity has demonstrated import or production activity in 2021 or 2022, is intended to exclude entities from receiving allocations that are no longer undertaking the activities for which allowances are required (*i.e.,* production and import). Under the commenter's proposal, an entity that is transferring all of their allowances is no longer undertaking activities for which allowances are required. EPA understands that the commenter may be interested in receiving an allocation such that the commenter has allowances to sell and transfer, but the commenter failed to provide a rationale aligned with the AIM Act and the HFC phasedown program for why it would be appropriate in such a situation for EPA to continue to allocate to an entity that is not itself using allowances. Entities who choose to buy and sell HFCs within the United States, *e.g.,* as servicing companies or distributors, instead of directly producing or directly importing HFCs may continue to do so without receiving allowances. EPA is interested in avoiding allocating to entities that had historic import or production data in the 2011–2019 timeframe, but have since ceased operations or shifted away from HFC production or import. Allocating allowances to entities that cannot or will not use them could be disruptive to the market during the phasedown if allowances go unexpended or could result in windfall profits to an entity that will only use the allowances to transfer for a price. The practical effect of not allocating allowances to an entity due to their inactivity would be a pro rata increase of allocation levels to other entities receiving allowances from the general pool allocation.

One commenter suggested that EPA require entities to be active in the market in 2022 to receive allowances for 2024 through 2026. This commenter further provided a method for redistributing unused allowances. The commenter provided a formula that would allocate more in future years to entities that used more of their allowances. For example, an entity that used 100 percent of its allowances in year 1 would receive more allowances in year 2 or 3 as a result of the number of unused allowances in year 1 than an entity who only used 80 percent of its allowances that year. The method would count transfers the same as if an entity used its allowances to produce or import. The commenter notes that such a model provides all the advantages that EPA is looking to achieve, including: relying on historic data from 2011 through 2019 for allocations; transparency of available data; ensuring that entities who are no longer active in the HFC market or active at all do not receive allowances; and adjusting for unrepresentative activity, *i.e.,* large numbers of imports in certain years prior to AD/CVD findings and actions, that might have informed previous allocations, but not be representative of more current real-world conditions.

EPA is not finalizing an approach in line with the commenter's suggestion. EPA disagrees with the commenter on the benefit of moving allowances away from entities based on a single year of allowance expenditure. There are many factors that could lead to an entity expending fewer allowances in a given year beyond a permanent shift in business model, such as a temporary change in customer demand or delays in a foreign supplier fulfilling contracts. In such situations, EPA does not want to establish perverse incentives to encourage an entity to expend allowances to import more HFCs than the entity otherwise needs or to otherwise penalize an entity that does a one-time transfer of allowances. Further, the commenter's model would require EPA to determine details about scope, criteria, and implementation for which we do not have sufficient information at this time to consider finalization of such a method. Additionally, the commenter's suggested pre-requisite for entities to have been active in 2022 as well as the commenter's proposed time period for when the model would apply are not consistent with the Agency's proposals. The commenter does not provide rationale for why evaluating only 2022 would be appropriate in lieu of evaluating either 2021 or 2022, nor does the commenter provide a rationale for why the Agency should issue allowances using the proposed model for 2024 through 2026 only.

Relying on information from 2021 or 2022 solely for the purpose of determining eligibility for allowances will ensure companies receiving allowances are still actively producing or importing regulated HFCs, regardless of who received allowances in calendar

[18] EPA also allowed for an entity to identify individual circumstances for not importing in that year due to the COVID–19 pandemic. EPA did not propose a mechanism to allow an entity to request individualized consideration if they did not produce or import in 2021 or 2022.

years 2022 and 2023. Allowing two years, as opposed to a single year, provides additional time to demonstrate activity in the market, and is intended to reduce the impacts of supply chain delays, temporary changes in demand, or other business decisions. Some entities also import small volumes of HFCs and may not need to import every year. Entities who would be eligible to receive allowances based on this criterion would not need to have produced or imported HFCs in both years, nor would entities need to have produced or imported at any particular level in either year.

EPA proposed to use a fixed set of years (*i.e.,* 2021 and 2022) to determine eligibility for entities to be allocated allowances for calendar years 2024 through 2028 to provide a degree of clarity and certainty to entities during this period and to minimize disruption to existing supply chains that have adjusted to the 2022 and 2023 allowance allocations. By finalizing this approach, all market participants will be able to generally understand their own and other allowance holders' market share for the 2024 through 2028 period as of October 1, 2023, because there would not generally be shifts in how many entities EPA is allocating allowances to and the relative share of allowances going to those entities. Looking to behavior in 2021 or 2022, specifically to determine whether entities were actively producing or importing HFCs, would also have administrative benefits to EPA. For example, determining annual allocations will be more streamlined because EPA will rely on data that has been vetted and reviewed at a single point in time in advance of the calendar year 2024 allocation as well as all allocations through calendar year 2028. The commenter's scenario is also one that the Agency was trying to avoid, *i.e.,* issuing allowances to entities that are no longer in the HFC production or import business.

The Agency provided one final opportunity, separate from the proposed rulemaking, to entities to verify, and if necessary correct, the data available to the Agency on entities' historic consumption activities from 2011 through 2021 for the purposes of the AIM Act. The Agency transmitted an electronic communication or letter to all entities that were known, or likely, to have had consumption activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, such data. Additionally, in the proposal for this rulemaking, EPA stated that ''[i]f there is any entity that did not receive a letter or electronic communication from EPA that had consumption activity of regulated substances from 2011 through 2021, EPA is hereby providing notice that for the purposes of future HFC allowance allocations under the AIM Act, EPA will not consider any data unless submitted to EPA through the Electronic Greenhouse Gas Reporting Tool (e-GGRT) by the close of the comment period on December 19, 2022.'' The Agency was explicit that after this final opportunity for entities to make corrections to historic data, ''EPA does not intend to consider any data revisions in allocation decisions'' where the revisions would be taken into account when determining the annual allocation issued by October 1 of each year for 2024 and future year allocations (87 FR 66383). After consideration of the public comments on this issue, EPA continues to find these considerations compelling. Accordingly, the Agency will not consider any additional revisions to historic data for the purposes of allowance allocations for these years.[19]

EPA did not propose to allow companies that were inactive in 2021 and 2022 to request individualized consideration for whether they were active in the market, and EPA disagrees with one commenter's contention that it would be appropriate to do so. EPA allowed for individualized consideration for failure to import in 2020 in the Allocation Framework Rule, given 2020 was a strikingly unique year due to the COVID–19 pandemic and supply chain disruptions. Further, EPA was only looking to one year to verify company activity, whereas under this rule EPA is looking to see if a company was active in either 2021 or 2022. The commenter has failed to explain why those years produced unique challenges equivalent to the pandemic and supply chain disruptions of 2020 and also has failed to explain why looking across two years of data, as opposed to one, would not rectify any such challenges, *i.e.,* if 2021 were equally as challenging with respect to the pandemic and supply chain disruptions of 2020, any import activity in either 2021 or 2022 regardless of quantity would meet the Agency's proposed activity requirement. Allowing two years, as opposed to a single year, provides additional time to demonstrate activity in the market, and is intended to reduce the impacts of supply chain delays, temporary changes in demand, or other business decisions.

Accordingly, for the reasons discussed above, EPA is finalizing its proposal that to be eligible to receive general pool allowances for 2024 through 2028 based on historic production and import activity (*i.e.,* for entities that produced and imported regulated substances in 2011 through 2019), an entity must have produced (for production and consumption allowances) or imported[20] (for entities only receiving consumption allowances) bulk regulated substances in 2021 or 2022.

The Agency considered and took comment on whether new market entrants should be required to import in 2022 to be eligible for allocation of allowances for calendar years 2024 through 2028. Several commenters were supportive of requiring recipients of set-aside allowances as new market entrants to import in 2022 to be eligible for allocation of consumption allowances for calendar years 2024 through 2028. One such commenter suggested that EPA evaluate whether new market entrants' consumption activity in either 2022 or 2023 was consistent with EPA's rationale for allocating those allowances in the first place, *i.e.,* entities that did not use their allowances, or used their allowances in a manner that was wholly inconsistent with the new market entrant provisions, should not be eligible to receive allowances for calendar year 2024 through 2028. One additional commenter generally supported an approach where new market entrants must have imported in calendar year 2022 to receive allowances. Another commenter supported not requiring activity in 2022 for a new market entrant to be eligible for future general pool allowances, noting that some smaller entities might not have been able to amass resources to fully use their allowances in either 2022 or 2023. This commenter further cited that new market entrants may not have been able to order products or finalize agreements with parties such as banks and customs brokers until after issuance of their allowances on March 31, 2022.

[19] Data submitted as of December 19, 2022, that has been certified and verified will be taken into account when determining the annual allocation issued by October 1 of each year for 2024 through 2028. EPA will not consider revisions after this date in the 2024 through 2028 and all future year allocations, where relevant. If information reveals an entity has provided false, inaccurate, or misleading information, EPA reserves the right to issue administrative consequences to adjust allowances downward (in the same year or a subsequent year). Regardless of whether or not EPA applies an administrative consequence, EPA may also pursue any and all appropriate enforcement action.

[20] EPA will look to the statutory and regulatory definition of ''import'' to determine whether an entity imported bulk regulated substances in 2021 or 2022. An argument that an entity could fall within the regulatory definition of ''importer'' will not be relevant to this analysis.

EPA disagrees with commenters that took the position that new market entrants should be required to import at some point in 2022 to be eligible to receive general pool allowances for calendar years 2024 through 2028. Most new market entrants are, as their name suggests, new to the HFC import market and would not reasonably be expected to have any import activity in 2021. At the same time, data for the 2023 period would not be available and verified in time for allocation decisions for the allocation of calendar year 2024 allowances. Therefore, if the Agency applied eligibility criteria to new market entrants at all, it would need to look to 2022 for import activity. Accordingly, for these entities, EPA would not be able to look across two years for import for most new market entrants, unlike for general pool participants. EPA anticipated that most new market entrants would make use of allocated allowances and import regulated substances in 2022, but EPA previously recognized that new market entrants might have difficulty operationalizing their business to begin importing regulated substances in 2022 if the entity was fully new to this aspect of the import business. As a result, in the Allocation Framework Rule the Agency took the position that EPA would ''not reduc[e] allowances to new market entrants in 2023 for failing to use all the allowances issued in 2022'' (86 FR 55159). The commenters do not provide any rationale to counter these concerns raised by EPA in the proposal. The commenters also do not provide rationale on why it would be appropriate to look to only one year of data for entities that were brand new to the HFC import market, while allowing historically active companies to produce or import at any point in any quantity over a two-year span. Such an approach would seem to disadvantage entities that could have significant difficulty living up to such a requirement. A commenter suggested that EPA evaluate whether new market entrants' consumption activity in either 2022 or 2023 was consistent with EPA's rationale for allocating those allowances in the first place, but does not explain what it would mean for a new market entrant to use their allowances in a manner that was wholly inconsistent with the new market entrant provisions or how EPA would implement such a provision. EPA recognizes that entities who received allowances as new market entrants are in a variety of industries, and therefore determining whether they used the allowances in a manner consistent with the new market provisions would require us to determine details about scope, criteria, and implementation across each of the affected industries, *i.e.,* one size does not fit all. We do not have sufficient information at this time to make such determinations. The Agency also notes that the vast majority of these entities did import regulated substances and have had direct contact with EPA by way of required reporting or direct emails regarding implementation of the HFC phasedown. Accordingly, EPA is finalizing an approach that will not require any import activity of new market entrants for those entities to be eligible for allocation of calendar year 2024 through 2028 allowances.

To determine entities' eligibility for allowance allocations, EPA will rely on data that have been reported pursuant to the 40 CFR part 84 requirements. EPA will rely on data reported no later than February 14, 2023, which aligns with the reporting deadline for fourth quarter calendar year 2022 HFC reports under the HFC allocation requirements at 40 CFR part 84, subpart A.[21] Further, EPA is finalizing as proposed that in cases where allowances were not expended at the time of production and/or import of HFCs, that production and import would not count as activity for eligibility purposes. In other words, EPA will only consider production and import of HFCs where allowances were expended as required when determining whether an entity is eligible for allowances. For example, imports where entities received non-objection notices for transformation or destruction, and imports where entities have notified EPA of transhipments consistent with our regulations will not be eligible for consideration when determining whether an entity is eligible for allowances. Additionally, entities who imported or attempted to import regulated HFCs in 2022 (absent 2021 import activity) without the necessary allowances will not be eligible to receive allowances beginning in 2024, even if they had historic import activity between 2011 and 2019. The distinction of 2022 versus 2021 import activity is integral in this particular circumstance because there were no HFC phasedown-driven limits on import activity in 2021, whereas the phasedown of HFCs instituted controls on import activity by way of consumption allowances beginning in 2022. To reiterate, entities who had production or import activity in either 2021 or 2022 would be eligible for production and/or consumption allowances, unless an entity only has activity in 2022 that occurred without any required allowance expenditure.

Related to the criteria for appropriate entities to receive allowances, the Allocation Framework Rule provides an extensive discussion of how EPA may remedy activity by entities that violate DoC and CBP trade laws via administrative consequences. The proposed rulemaking associated with this final rule did not explicitly speak to these types of anticompetitive behaviors, *e.g.,* AD/CVD findings, or any potential remedies. However, the Agency received at least eight comments during the public comment period for this proposed rulemaking offering a variety of mechanisms for how EPA may address such behavior. One set of suggestions was for the Agency to either not issue allowances to, or revoke allowances from, entities who have circumvented AD/CVDs because their share of the U.S. HFC market was initially established through the sale of unfairly traded (*i.e.,* dumped) imports and that share was subsequently maintained based on circumvention of the antidumping duty orders issued by the DoC. Commenters suggested that any otherwise unissued or revoked allowances should be distributed to domestic producers of HFCs.

As discussed elsewhere in the preamble, EPA has determined that it is not appropriate to base allowance allocation calculations on any unfair trade practices that have happened in the past, specifically in the 2011 through 2019 timeframe before the AIM Act was enacted and before EPA began the Congressionally-mandated phasedown of HFCs. However, EPA emphasizes that the Agency is concerned about companies not complying with all trade provisions applicable to the import of HFCs, including any AD/CVDs, as violations of such provisions may create an unequal environment. In the Allocation Framework Rule, EPA finalized a requirement that any entity importing HFCs subject to an AD/CVD order issued by DoC that received allowances must provide documentation of payment of the AD/CVD duties for HFCs imported from January 1, 2017, through May 19, 2021, the date of the proposed rulemaking, or provide evidence that those imports were not subject to AD/CVD for those years. Commenters also suggested applying administrative consequences to the allowances of circumventing importers; eliminating or reducing the ability for circumventing importers to transfer allowances; and, reducing allowance amounts for circumventing importers (the last of

[21] For more information, visit *https://www.epa.gov/climate-hfcs-reduction/hfc-allocation-rule-reporting-and-recordkeeping.*

which is discussed elsewhere in the preamble). As discussed in the Allocation Framework Rule, there are a variety of situations or circumstances in which EPA may exercise its authority and discretion to levy administrative consequences. This would include a situation where an entity has not paid a required AD/CVD within the required time frame. However, EPA's determination to issue administrative consequences is generally separate from this rulemaking and would be based on the specific situation or circumstance identified. EPA will continue to consult intergovernmental partners, *e.g.,* CBP, as appropriate.

D. Can allowances be transferred or conferred prior to the calendar year?

EPA proposed to clarify that entities may confer or transfer allowances at any point after they are allocated until the allowance expires at the end of the calendar year for which it was allocated. In the Allocation Framework Rule EPA established 40 CFR 84.5(d), which provides that all production, consumption, and application-specific allowances are valid only for the calendar year for which they are allocated (*i.e.,* January 1 through December 31). The intent of this provision was to state that allowances could only be expended in the calendar year for which they were issued. However, EPA recognized at proposal that use of the term ''valid'' could be read as ambiguous with regard to whether it allows for transfers and conferrals before the calendar year. Allowances can only be expended to cover imports or production in the calendar year for which they are allocated, but EPA proposed to amend 40 CFR 84.5(d) to more clearly state that entities may confer or transfer allowances before January 1 of the calendar year.

Commenters widely supported EPA's proposed revision to resolve potential ambiguity. Commenters stated that this clarification will smooth business transactions and reduce potential delays. EPA received no adverse comment on this proposed revision. As a result, EPA is finalizing the proposed amendment to the prohibition in 40 CFR 84.5(d) to more clearly state that entities may transfer and confer their allowances upon their allocation, including ahead of January 1 of the calendar year for which the allowances were allocated. This amendment does not permit an allowance holder to expend an allowance valid in one calendar year in any other year, *e.g.,* a calendar year 2024 allowance can only be expended for a regulated substance produced or imported in 2024 even if the allowance was transferred or conferred in the last quarter of 2023.

The Agency hopes that this added clarity will facilitate allowance holders' planning for that upcoming year. EPA encourages allowance holders, including application-specific allowance holders, to undertake transfers and conferrals early in the year and, where possible, well in advance of when regulated substances would need to be produced or imported. For more information on when a producer and importer must possess and expend allowances, see 40 CFR 84.5, with the changes being finalized in this rule discussed in section V.A of this preamble.

EPA also received comments stating that the existing 5 percent transfer offset was too high. Multiple commenters recommended that the Agency reduce the offset, such as to 1 percent or 0.1 percent, to encourage transfers and facilitate a smoothly operating transfer market. One commenter directly asserted that EPA effectively reopened the 5 percent offset provision because the offset is directly related to EPA proposals to clarify the timing of allowance transfers and other transfer-related provisions concerning the submittal of importer of record information, requirements related to transfers, and those required of repackagers.

EPA responds that the Agency did not reopen the transfer offset provisions in this rulemaking's proposal, did not solicit comments on the matter, and did not propose revisions to the transfer offset provisions. Comments on this issue are out of scope for this rulemaking. Generally speaking, an agency reopens an issue when it either explicitly or implicitly indicates it is reexamining its former choice. *National Min. Ass'n* v. *U.S. Dept. of Interior,* 70 F.3d 1345, 1351 (D.C. Cir. 1995). A reviewing court will consider whether ''the entire context'' of a rulemaking demonstrates that the Agency is substantively reconsidering an existing regulation. *Growth Energy* v. *EPA,* 5 F.4th 1, 21 (D.C. Cir. 2021). Nothing in EPA's proposal suggests that EPA was substantively reconsidering the transfer offset amount. The proposal to clarify the timing of allowance transfers in 40 CFR 84.5(d) in no way implies that EPA is reconsidering the transfer offset amount codified in 40 CFR 84.19(a)(1). Neither does the invitation for comment on the proposed new paragraph in 84.19(a)(5) clarifying that allowances can be expended by companies with specified affiliation without a transfer. *See, e.g., National Ass'n of Reversionary Property Owners* v. *Surface Transp. Bd.,* 158 F.3d 135, 142 (D.C. Cir. 1998) (''When an agency invites debate on some aspects of a broad subject . . . it does not automatically reopen all related aspects including those already decided.'').

Even if this issue was reopened as part of this rulemaking, which it was not, commenters did not provide any information that would lead EPA to change its decision as to the appropriate parameters for the transfer offset provision. As discussed in the Allocation Framework Rule at 86 FR 55154, the AIM Act provides significant discretion to EPA in choosing an appropriate offset level. The Agency considered public comments during development of the Allocation Framework Rule and concluded that a five percent offset was the right value to balance a net environmental benefit without creating an overly burdensome requirement that would discourage trading necessary to meet market demands. Allowances are issued to companies at no cost and transferors retain 95 percent of the value of something provided for free if they choose to transfer those allowances. Furthermore, allowances are not a property right of the allowance holder and EPA has been directed by Congress to require an offset if companies choose to transfer those allowances. EPA is not taking final action with respect to the transfer offset provisions in this rulemaking.

IV. How is EPA updating the consumption baseline?

Subsection (e)(1) of the AIM Act directs EPA to establish a production baseline and a consumption baseline and provides the equations for doing so. In the Allocation Framework Rule, EPA initially calculated and codified the production and consumption baselines according to the formulas outlined in subsection (e)(1) of the AIM Act. In this rulemaking, the Agency proposed to update the consumption baseline to account for corrected data. In this action, EPA is finalizing an updated consumption baseline, and associated phasedown schedule, to account for these corrected data.

The AIM Act instructs EPA to calculate the consumption baseline by, among other things, using the average annual quantity of all regulated substances consumed in the United States from January 1, 2011, through December 31, 2013. In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline. In the Allocation Framework

Rule EPA codified the consumption baseline as 303,887,017 MTEVe at 40 CFR 84.7(b)(2) and the total allowance quantities that could be allocated for each year at 40 CFR 84.7(b)(3). A complete description of EPA's process in developing the codified baseline figure can be found in the Allocation Framework Rule at 86 FR 55137–55142.

After EPA finalized the Allocation Framework Rule, one company informed EPA that the 2011 and 2012 HFC import data that it had reported to the GHGRP and certified per 40 CFR 98.4(e)(1) as true, accurate, and complete under penalty of law, was, in fact, significantly more than its actual import quantities. Because EPA used the company's 2011 and 2012 HFC import data in the calculation of the consumption baseline, the Agency's calculated and codified consumption baseline was high. The company then submitted and certified revised reports. EPA verified the corrected data by reviewing the importer's invoices and comparing the reported data to import data provided by CBP.

In this rulemaking, the Agency proposed to update the consumption baseline and associated phasedown schedule based on corrected and verified data from the one company that identified an error in its historic reporting. Specifically, EPA proposed to revise the consumption baseline from 303,887,017 MTEVe to 300,257,386 MTEVe, a decrease of 3,629,631 MTEVe, to account for that error. The Agency also stated that it would include any additional verified data revisions from the 2011 through 2013 timeline in the revision to the consumption baseline.

As described in the proposal, separate from and concurrent with this rulemaking, EPA provided an opportunity for entities to verify, and if necessary correct, the data [22] available to EPA on those entities' historic consumption activities from 2011 through 2021 for purposes of the AIM Act. EPA sent an electronic communication or letter to all entities that were known, or likely, to have had consumption activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021.[23]

EPA provided further notice through this rulemaking's proposal of a final opportunity to submit corrected data to the Agency through e-GGRT by the close of the comment period on December 19, 2022, in the case that any entity with consumption activity of regulated substances from 2011 through 2021 did not receive a letter or electronic communication from EPA. To allow EPA to verify the reported data in a timely manner, anyone reporting past consumption data for the first time must have provided transactional records (*e.g.,* bills of lading, invoices, or CBP entry forms). Through EPA's data review, approximately 10 additional entities provided verifiable revised values for reporting years 2011 through 2013.

Multiple commenters supported EPA's proposal to adjust the consumption baseline to reflect corrected historical data. With respect to adverse comments on the proposal, one commenter expressed concern that the consumption baseline does not reflect the market's growth since the baseline years of 2011 through 2013. Another commenter stated that the Agency should account for an anticipated need of additional HFCs for heat pumps, and underreporting due to smaller producers and importers being under the threshold of reporting to the GHGRP, by increasing the consumption baseline.

EPA disagrees with comments opposed to EPA's proposal. Subsection (e)(1) of the AIM Act provides specific formulas that describe how to establish the baselines and specifies data that enter into these formulas. In this rulemaking's proposal, the Agency described the data collection and verification efforts used in the Allocation Framework Rule to establish the consumption baseline and in this rulemaking to revise the consumption baseline (86 FR 66382–66383). EPA does not have discretion to increase the consumption baseline based on one commenter's understanding of market growth after the baseline years, which are identified in the statute, or another commenter's claims regarding possible future demand. In response to one commenter's suggestion that EPA needs to adjust the baseline to account for underreporting due to smaller producers and importers being under the threshold of reporting to the GHGRP, EPA disagrees with the commenter's premise that there is a notable flaw in EPA's codified baseline as a result of GHGRP reporting thresholds. As discussed in the Allocation Framework Rule (86 FR 55140–55141), the Agency used multiple appropriate sources of data to calculate the consumption baseline, conducted significant outreach in its data collection efforts, and specifically attempted to contact through letters and emails companies that may not have been reporting to GHGRP because they were below the GHGRP reporting threshold. EPA has also provided extensive public notification through a variety of venues of how reported data is used to establish the baseline. Entities have had numerous opportunities to correct potential underreporting due to being under the threshold of reporting to the GHGRP. The Agency used this more complete dataset, including later opportunities to correct data as described in this section, to establish and update the consumption baseline. The proposal in this rulemaking to adjust the consumption baseline was narrowly limited to correcting data that contribute to the previously established consumption baseline and through the processes described above, and did not implicate the general approach used to calculate the baseline.

One commenter stated that the baseline data should be open and searchable so the public can review and identify errors. As noted in the initial Notice of Data Availability (86 FR 9059, February 11, 2021) and the Allocation Framework Rule (86 FR 55191–55195), the Agency acknowledges the importance of data transparency and accountability. EPA intends to release certain available data to the public while respecting information entitled to confidential treatment. The most recent release of data is available at *https://www.epa.gov/ghgreporting/ghgrp-data-relevant-aim-act.* However, the company-specific data, including production, import, export, and destruction data, used to establish the baselines are confidential and cannot be publicly released. As discussed in the Allocation Framework Rule (86 FR 55192), many of the data elements reported to 40 CFR part 98 subpart OO were determined to be, and are treated as, confidential by EPA (see, *e.g.,* 76 FR 30782, May 26, 2011; 76 FR 73886, November 29, 2011; 77 FR 48072, August 13, 2012, 78 FR 71904, November 29, 2013; and, 81 FR 89188, December 9, 2016).[24] Transactional records also include information that is not publicly available. EPA has provided aggregated information concerning baseline data as available,

[22] These data were certified per 40 CFR 98.4(e)(1) by the importer as true and accurate under penalty of the CAA at the time of original submission.

[23] This request was for purposes of implementing the AIM Act. Nothing in this letter or in the complementary process described below relieves any entity of obligations under the GHGRP regulations codified in 40 CFR part 98. EPA notes that failure to submit a report or reporting a fraudulent report may be considered a violation of the CAA subject to penalties and fines.

[24] For a summary, see *https://www.epa.gov/sites/production/files/2020-09/documents/ghgrp_cbi_tables_for_suppliers_8-28-20_clean_v3_508c.pdf.*

such as in a memorandum titled ''*HFC Production and Consumption Data—Final Rule*'', available in the docket for the Allocation Framework Rule (Docket ID No. EPA–HQ–OAR–2021–0044). In this action the Agency is providing additional aggregated information concerning changes to the consumption baseline in a memorandum titled, ''*Docket Memo on Revisions to HFC Consumption Baseline*'', available in the docket for this rulemaking. However, given the confidentiality of most data involved in the Agency's baseline calculation, it is not feasible for EPA to release information detailed enough to meet the commenter's request for an open and searchable dataset that allows the public to review and identify discrepancies to the baseline data while respecting existing confidentiality determinations and governing regulations.

As part of EPA's review process, EPA also identified an additional update to be made to the consumption baseline calculation to improve accuracy. Specifically, EPA reviewed offsite transformation and destruction totals reported by companies for the 2011–2013 period, and—after filtering out totals already reported elsewhere as onsite transformation and destruction—subtracted these totals from overall consumption. Additional information on this change can be found in the memorandum titled, ''*Docket Memo on Revisions to HFC Consumption Baseline*'', available in the docket for this rulemaking. EPA changed the production baseline in a separate action to reflect the additional transformation and destruction identified.

Based on the considerations discussed above, EPA is finalizing updates to the codified consumption baseline with the corrected data. Incorporating the corrected data from this rulemaking's proposal, and further updates separate from this rulemaking, EPA is revising the consumption baseline from 303,887,017 MTEVe to 302,538,316 MTEVe, which is a decrease of 1,348,701 MTEVe. The Agency reiterates here that EPA did not reopen the production baseline in this rulemaking.

The revision of the consumption baseline amounts to less than a 1 percent change in the baseline. Once EPA applies the relevant phasedown step to the baseline and then allocates the resulting allowances among eligible recipients, the change in the consumption baseline is expected to have a small effect on individual entities' allocations. Further, this revised consumption baseline starts affecting allowance allocations for calendar year 2024. Because of the prior framing of EPA's regulations, specifically the fact that there was no prior allocation methodology that would apply to calendar year 2024 allowances and beyond, no entities should have had a reasonable expectation of allowance allocation levels for any individual entity. Therefore, EPA expects that this alteration of the consumption baseline will not affect the regulated communities' reasonable reliance interests.

Revising the consumption baseline changes the total consumption cap in MTEVe for regulated substances in the United States in each year after the revision takes effect. Therefore, EPA is revising the table of production and consumption limits at 40 CFR 84.7(b)(3) by replacing the current values in Table 2, column 2 of this preamble with the values in column 3.

TABLE 2—REVISED LIMIT OF TOTAL CONSUMPTION ALLOWANCES

Year	Previously codified total consumption (MTEVe)	Revised total consumption (MTEVe)
2024–2028	182,332,210	181,522,990
2029–2033	91,166,105	90,761,495
2034–2035	60,777,403	60,507,663
2036 and thereafter	45,583,053	45,380,747

V. How is EPA revising requirements related to allowances for import?

EPA made several proposals based on the experience gained in implementing the HFC phasedown program to date under the existing 40 CFR part 84 regulations. In this section, EPA discusses amendments to codify the point in time that an allowance must be expended as well as who can expend allowances. We also discuss a regulatory amendment to clarify the existing requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component substance (such as HFC–134a) or whether the HFC is part of a multicomponent substance (such as HFC refrigerant blend R–410A). Additionally, EPA discusses a proposed amendment concerning importation of heels when the precise weight of a container of regulated substances in unknown, which EPA is not finalizing.

A. Codifying the Point in Time That an Allowance Must Be Expended To Import Regulated Substances

Under 40 CFR 84.5(b)(1) EPA prohibited persons from importing bulk regulated substances except, among other conditions and with limited exceptions, ''[b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange value-weighted equivalent of the regulated substances imported.'' Through implementing the HFC allocation system, EPA has described the exact point in time used to determine which calendar year allowance would need to be expended for each import of a regulated substance. EPA has spoken explicitly to this issue, including through a December 21, 2021, post on our HFC phasedown Frequently Asked Questions web page.[25] EPA stated that a marine vessel waiting off the coast of the United States in December 2021, that berthed in January 2022, would be required to expend a calendar year 2022 allowance for any HFCs that berth at a port in the United States in 2022. EPA proposed to incorporate this previously stated interpretation into the 40 CFR part 84 regulatory text. Specifically, EPA proposed to revise the prohibition language in 40 CFR 84.5(b)(1)(i) to remove the point that an allowance must be expended ''at the time of import'' and instead require that an allowance be expended at the time of ship berthing [26] for vessel arrivals, border crossing for land arrivals such as

[25] EPA. Phasedown of Hydrofluorocarbons Final Rule Frequently Asked Questions. *https://www.epa.gov/climate-hfcs-reduction/phasedown-hydrofluorocarbons-final-rule-frequently-asked-questions.*

[26] EPA has and continues to interpret berth to mean ''to moor (a ship) in its allotted place at a wharf or dock.''

trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air.

A few commenters noted their support of EPA's proposal to codify the point in time that an allowance must be expended to import bulk regulated substances. One commenter noted that finalizing this proposal would serve to reduce uncertainty. EPA received no adverse comments on this proposal.

EPA is finalizing the regulatory revisions as proposed to incorporate the Agency's preexisting interpretation on when an allowance must be expended to import bulk regulated substances. Providing specificity on this point in the regulations helps ensure consistent and accurate accounting associated with allowance use for all importers. For context, the point in time that a vessel berths, a truck or other vehicle crosses the border for land arrivals or the first point of terminus in U.S. jurisdiction for planes may be reflected as the ''Conveyance Arrival'' date for shipments, which importers or their brokers with access to the Automated Broker Interface (ABI) may find through an ACE Cargo Manifest/In-Bond/Entry Status Query. However, regardless of the date identified in ABI as the ''Conveyance Arrival,'' it is the importer of record's obligation to ensure that it has expended the appropriate calendar year allowances in the appropriate quantity and at the appropriate time to align with regulatory requirements.

EPA is not amending the regulatory definition of ''import.'' The Allocation Framework Rule at 40 CFR 84.5(b)(1)(i) prohibits the importation of bulk regulated substances without expending the required allowances, with limited exceptions. Since the definition of ''import'' in the AIM Act and the 40 CFR part 84 regulations finalized in the Allocation Framework Rule includes an ''attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States,'' it is clear that the existing statutory and regulatory framework prohibit an entity from attempting to land, bring, or introduce regulated substances into the United States without expending the required allowances, unless the importer meets one of the limited exceptions in the regulations. EPA does not intend or interpret this regulatory definition to narrow prohibited behavior as defined under the AIM Act and the associated scope of liability with attempts to land, bring, or introduce regulated substances into the United States without requisite allowances.

To codify this position clearly, EPA proposed to add language at 40 CFR 84.5(b) that states: ''No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in 40 CFR 84.5(b)(1).'' EPA did not receive any adverse comments on this proposal and is finalizing this requirement as proposed. These changes to 40 CFR 84.5(b) do not alter the existing scope of liability for attempting to land, bring, or introduce regulated substances into the United States without requisite allowances.

EPA proposed an alternative to revise the text at 40 CFR 84.5(b)(1)(i) to specify that the calendar year allowances that must be expended are based on the time a ship berths for vessel arrivals, border crossings for land arrivals, and first point of terminus in U.S. jurisdiction for arrivals via air. This alternative proposal focused on defining which calendar year of allowances would be required to be expended rather than the precise point in time an allowance needs to be expended. EPA did not receive any comments that supported this alternative proposal or otherwise advocated for the Agency to take this pathway at finalization over the primary proposal. As noted earlier in this section, EPA is finalizing the primary proposal to codify the point in time an allowance must be expended, so the Agency is not finalizing this alternative.

EPA noted at the proposal stage that if the Agency were to finalize the proposed regulatory revision to 40 CFR 84.5(b)(1)(i), EPA proposed to also require that the importer of record be in possession of allowances in the amount that will need to be expended at the time of filing their advance report under 40 CFR 84.31(c)(7). A few commenters were opposed to this aspect of EPA's proposal. One commenter noted that since the purpose of the advance notification requirement is for EPA to confirm that an importer has sufficient allowances available to import a regulated substance, this additional requirement is unnecessary since an entity must have allowances before being notified that they may proceed with an import. Another commenter noted that EPA had not fully analyzed whether this proposed requirement was necessary considering other enforcement and compliance tools. EPA agrees to some extent with commenter's characterization. As explained in the Allocation Framework Rule, the advance notice reporting requirement is intended to allow ''EPA to verify if allowances are available or the HFCs have prior approval for import in the case of HFCs imported for destruction or transformation under 40 CFR 84.25, or imported for transhipment under 40 CFR 84.31(c)(3), and confirm whether a shipment should be allowed to clear Customs or not'' (86 FR 55186). However, the advance notice reporting requirement cannot function as intended without an entity possessing allowances at the time the notification is made. For example, if an entity received a transfer of allowances moments before a ship berthing, that entity would have allowances at the time the allowances must be expended, but the advance notification process would not have been able to function as intended. If an entity does not possess requisite allowances for the import of bulk regulated substances at the time of the advance notice reporting, EPA will not be able to verify if allowances are available and whether the shipment meets EPA's HFC requirements to be released from CBP's custody. Given that advance reporting is required near in time to when allowances must be expended, EPA does not anticipate this requirement would be a burden on regulated entities but does anticipate it would have significant benefits for EPA implementation and enforcement efforts. For example, ensuring that entities possess the requisite allowances for an import of bulk HFCs at the time of advance notice reporting will help decrease unnecessary EPA review of shipments, which in turn will help decrease delay in CBP clearance. Entities will be better positioned to take legal possession of their bulk HFC goods from both an EPA and CBP perspective as soon as possible. Therefore, EPA is finalizing the requirement as proposed.

B. Who must expend allowances for import?

EPA proposed to specify that only the importer of record can expend allowances for an import of regulated substances. One commenter agreed that this proposed requirement ''facilitates clarity, transparency and accountability'' and that it is consistent with customs law for the importer of record to be the sole designated party in this regard. EPA acknowledges the commenter's support. EPA received no adverse comment on this proposal. For the following reasons, EPA is finalizing this amendment as proposed. Under CBP requirements, the importer of record is ultimately responsible for the correctness of the entry documentation and all associated duties, taxes, and fees.[27] Specifying that only the importer

[27] CBP. Tips for New Importers and Exporters. *https://www.cbp.gov/trade/basic-import-export/importer-exporter-tips.*

of record can expend allowances for an import facilitates clarity, transparency, and accountability. It can be difficult for EPA to compare import records and other filings from CBP against advance notification records and the balance sheet of existing allowance holders without a clear expectation of how the entity that will expend allowances for an import of regulated substances would be identified in CBP filings. This can slow down EPA and CBP processing of imports at a minimum, and in the worst-case scenarios can hamper EPA's ability to identify shipments to be held at the border to halt potentially illegal shipments from entering the United States. As a real-world example, during EPA review of HFC imports, there was a single import entry with six unique entities (referred to as parties), where at least three parties, based on their named roles in the entry, could expend allowances to cover the import under EPA's existing regulations. This situation can be particularly confusing and lead to uncertainty if multiple listed parties in an entry are allowance holders. Requiring that only the importer of record may expend allowances for a shipment addresses this difficulty because EPA will be able to advise CBP to hold or deny entry of merchandise where the importer of record is not an allowance holder or had not filed appropriate reports for the destruction, transformation, or transhipment of imported merchandise.

Making the regulatory change will help strengthen EPA's ability to track the importation of regulated substances and expenditure of allowances and support compliance assurance. The Agency is also concerned about instances where allowance holders may try to circumvent the requirements in 40 CFR 84.19, including but not limited to the requisite offset for inter-company transfers of allowances. EPA has received inquiries from entities seeking to facilitate imports on an allowance holder's behalf where the facilitating entity would be listed on all available CBP paperwork and appear in meaningful ways to be the ''importer.'' In such instances, it would seem that the facilitating entity is truly importing regulated substances, and using a separate entity's allowances to do so. In such an instance, it seems more in line with existing EPA regulations and the AIM Act that either the allowance holder take on the role as the importer of record or for the allowance holder to transfer allowances to the facilitating entity.

EPA also proposed amending 40 CFR 84.5(b) to make it clear that a person who meets the definition of an importer will be liable unless they can demonstrate that the importer of record possessed and expended the appropriate allowances. The Allocation Framework Rule at 40 CFR 84.3 defines ''importer'' broadly to include the importer of record and any person who imports a regulated substance into the United States, the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf, the consignee, the actual owner, and the transferee, if the right to draw merchandise in a bonded warehouse has been transferred. This would revise regulations established through the Allocation Framework Rule at 40 CFR 84.5(b)(2) that state that ''[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).'' EPA received one supportive comment on this proposal noting that it would help EPA enforce the phasedown program. EPA received one adverse comment on this proposal from an entity that argued that entities that are not the importer of record would not have sufficient knowledge of the import transaction to ensure regulatory compliance and would not have the ability to force an importer of record to comply with EPA regulations. The commenter also argues that EPA's proposed amendment would not enhance compliance, but rather inject confusion into the process and have a potentially harsh result on ''parties who have not done anything wrong and do not have the knowledge or control over the transaction to ensure compliance.'' The commenter also notes that EPA's proposal is untenable for customs brokers.

EPA notes at the outset that under EPA's proposed change, a customs broker would not be liable unless they fall under the regulatory definition of importer. If a customs broker is only acting as a broker, EPA understands that the broker would not fall under the regulatory definition of ''importer'' and therefore would not have any potential liability. If, for example, a customs broker also took on the role as a consignee, then the entity would fall under the regulatory definition of ''importer'' and could have potential liability if bulk HFCs were imported without expenditure of the requisite allowances. Moving beyond the specific point on customs brokers, adding language in 40 CFR 84.5(b) tied with the regulatory definition of ''importer'' helps EPA maintain the integrity of the HFC Allocation Program by imposing broad liability on parties involved in importing HFCs. EPA disputes the commenter's contention that entities falling under the definition of ''importer'' are too far removed from the transactional process to have requisite knowledge to ensure allowances are appropriately expended. EPA also notes that parties could contractually allocate risk through their business relationships. While this may be an alteration of preexisting business practices, EPA believes that this is a worthwhile alteration because without this approach, EPA could be forced to pursue enforcement actions for illegal imports against insolvent entities or entities without assets in the United States. While the importer of record must be the entity possessing and expending allowances for imports of bulk regulated substances, making this regulatory amendment clarifies that if this requirement is not met, EPA has discretion to pursue enforcement action and/or administrative consequences on all entities that meet the definition of importer for violations of those requirements. Given these considerations, EPA is finalizing this amendment as proposed.

C. Existing Requirement To Expend Allowances for Regulated Substance Components of Blends

In addition to clarifying when an allowance must be expended and the entity permitted to expend allowances for import, EPA proposed to revise 40 CFR part 84.5(b)(1) to reflect and further clarify the existing requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component substance, *i.e.,* neat substance, or whether the HFC is part of a multicomponent substance, *i.e.,* a blend or mixture containing one or more regulated substances. EPA is finalizing this clarification as proposed.

EPA stated in the Allocation Framework Rule ''allowances [are] necessary to produce or import [a] blend, or more precisely, the regulated HFC components contained in the blend'' (86 FR 55142). Under the Agency's existing regulations, the requisite number of allowances to import a multicomponent substance in bulk is determined by the exchange values of the blend components that are regulated substances. As EPA explained in the Allocation Framework Rule, if a blend contains multiple regulated

substances, then the exchange values of each component are used to determine the number of necessary allowances (86 FR 55133–55134). If a blend contains components that are not regulated substances, then those components are not included in determining the number of necessary allowances. While the Allocation Framework Rule already made this requirement clear, we proposed to revise the regulations so that they more explicitly reflect the already existing requirement to expend allowances for import of bulk multicomponent substances equivalent to the EVe quantity of regulated substance components contained within the blend. This proposed change to the regulations would therefore further enhance clarity but would not change the scope of existing requirements.

One commenter asserted that EPA does not have the authority to require allowances for HFC blends. The commenter cited section 103(c)(3)(B)(i) [28] of the AIM Act, specifically ''for the purposes of phasing down production or consumption of regulated substances'' as reason for why the statute does not authorize EPA to require producers or importers of HFC blends to acquire or hold allowances. They continue that section 103(c)(3)(B)(ii) subsequently states that the prohibition on designating HFC blends ''does not affect the authority of the Administrator to regulate under this Act a regulated substance within a blend of substances.'' The commenter argues that the language is not itself a grant of regulatory authority, but rather clarifies that any other authority of EPA to regulate is not diminished by subsection (i), and that subsection (ii) does nothing more than preserve EPA's ability to regulate HFC blends in ways that do not implicate ''phasing down production or consumption.'' The commenter asserts that 103(c)(3)(B)(ii) cannot permissibly be interpreted as a separate grant of authority to EPA to require allowances for HFC blends based on the chemical feedstocks that were used to produce those HFC blends before the products were imported into the United States, and that such a reading would allow EPA for all practical purposes to treat HFC blends as regulated substances, which is exactly what subsection (i) prohibits. Instead, the commenter suggests that if Congress had intended for EPA to require allowances for HFC blends, it could have—and arguably would have—so stated in clear simple language. The commenter argues that Congress chose to specifically prohibit EPA in subsection (ii) from designating or regulating blends for phase-down purposes, while leaving intact EPA's authority to regulate HFC components for purposes other than the HFC phasedown.

In further support of their views on this topic, the commenter asserts that HFC blends are chemical mixtures created by physically combining component HFCs into a new product that has unique physical chemical properties, including being an azeotropic mixture in which the gaseous components physically interact to create new behaviors. They note that HFC blends cannot be easily separated back into their component feedstocks without complex fractionation equipment, and for all practical purposes, an HFC blend is an entirely different substance than the chemical components from which it was manufactured, *i.e.,* the original HFC feedstocks that were used to manufacture the blend lose their individual identity and become part of a new substance.

EPA disagrees with the commenter's characterizations and contentions. The arguments raised by this commenter were recently raised to, and rejected by, the D.C. Circuit in a challenge to the Allocation Framework Rule. *Heating, Air Conditioning & Refrigeration Distributors Int'l* v. *EPA,* No. 21–1251 (D.C. Cir. June 20, 2023) (''EPA has statutory authority to regulate HFCs within blends . . . because an HFC within a blend remains a regulated HFC under the Act.''). Importing a blend of chemicals that includes regulated substances requires expending allowances to account for the regulated substances within the blend. This requirement was first introduced in the Allocation Framework Rule and has been an integral requirement since the beginning of the HFC phasedown. As relevant here, the regulations finalized in the Allocation Framework Rule provide that ''[n]o person may import bulk regulated substances'' except by expending allowances ''in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported'' (40 CFR 84.5(b)(1)). In the preamble to the Allocation Framework Rule, EPA explained that ''allowances [are] necessary to produce or import [a] blend, or more precisely, the regulated HFC components contained in the blend'' (86 FR 55142). In this final rule, EPA is revising 40 CFR part 84.5(b)(1) to further clarify the *existing* requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component substance, *i.e.,* neat substance, or whether the HFC is part of a multicomponent substance, *i.e.,* a blend or mixture containing one or more regulated substances. As described in the Allocation Framework Rule, the necessary number of allowances to import a blend is determined by the exchange values of the blend components that are regulated substances, and that existing requirement is not changed by this rulemaking. Similarly, if a blend contains multiple regulated substances, then the exchange values of each component are used to determine the number of necessary allowances. Likewise, if a blend contains components that are not regulated substances, then those components are not included in determining the number of necessary allowances. The statute identifies in 42 U.S.C. 7675(c)(1) regulated substances by molecular formula, and chemicals with that molecular formula can be present in a blend even where there are other substances that are also part of the blend.

This approach, requiring allowances to import bulk substances containing regulated substances, whether the regulated substance is contained in a blend or is a single component substance, is based on a straightforward reading of the statute. The commenter challenges EPA's approach based on the savings provision in 42 U.S.C. 7675(c)(3)(B)(i), but that provision has no relevance here. Subsection (c)(3)(B)(i) limits EPA's authority to designate additional regulated substances, but EPA has not and is not designating any blend as a new regulated substance. Subsection (c)(3)(B)(ii) provides that subsection (c)(3)(B)(i) ''does not affect the authority of [EPA] to regulate under this Act a regulated substance within a blend of substances.'' 42 U.S.C. 7675(c)(3)(B)(ii). That provision confirms the congressional understanding that the default statutory framework allows for regulation of a regulated substance within a blend of substances, and EPA does not assert that (c)(3)(B)(ii) is a grant of authority. EPA's approach here and in the Allocation Framework Rule is exactly what subsection (c)(3)(B)(ii) states is permissible. Importing a regulated substance requires expending allowances (see 42 U.S.C. 7675(e)(2)(A)(ii); 40 CFR 84.5(b)(1)). A person who imports a blend that contains regulated substances is,

[28] While EPA is duplicating the comment's method of citing the AIM Act in summarizing the comment, we understand the comment to be referencing 42 U.S.C. 7675(c)(3)(B)(i)–(ii), which we primarily refer to as subsection (c)(3)(B)(i)–(ii) of the AIM Act.

necessarily, also importing the regulated substances within that blend, and, accordingly, must expend allowances for the regulated substances so imported.

Any contrary approach would significantly undermine the allowance program by creating a massive loophole. Under the approach that the commenter advocates, an importer could blend a regulated substance with something else—even another regulated substance—and would become exempt from the annual phasedown limits. Under the commenter's theory, even a miniscule amount of something else mixed into a regulated substance could immediately free the resulting mix from regulation under the allowance program. That would allow for circumvention of the allowance program and nullify the statutory phasedown of HFC consumption that Congress directed in the AIM Act. *See Cnty. Of Maui* v. *Haw. Wildlife Fund,* 140 S. Ct. 1462, 1473 (2020) (''We do not see how Congress could have intended to create such a large and obvious loophole in one of the key regulatory innovations of [the statute].''). A blend released to the environment would have a climatic effect based on its constituent substances as individual molecules, not based on the fact that it was blended. It would also put domestic producers at a disadvantage if foreign blends could be imported without being subject to limits under the allowance program. Many HFCs are imported as blends currently, and a transition to new blends with lower global warming potentials is an expected part of the industry's response to the phasedown of HFCs, including blends of HFCs and hydrofluoroolefins (HFOs). Under the approach taken in this rule, importing such blends will still require allowances for the regulated substance components, although fewer allowances than importing an unblended regulated substance or a blend that is entirely comprised of regulated substances. That is important because if the importation of blends were entirely free from the allowance program, then the allocation program would not necessarily result in a transition from higher to lower exchange value blends.

The commenter's approach would also create a mismatch in the allowance program. The statute directs EPA to establish the consumption baseline by considering ''the average annual quantity of all regulated substances consumed in the United States'' between 2011 and 2013 (see 42 U.S.C. 7675(e)(1)(C)(i)). Consistent with a straightforward reading of ''all regulated substances consumed,'' EPA included in that quantity all regulated substances contained within imports of HFC blends. Specifically, EPA relied largely on data about historic HFC production and consumption that had been reported to EPA through the GHGRP under 40 CFR part 98, subpart OO (see 86 FR 27164 which describes data available through GHGRP). Imports of HFCs within blends were required to be reported under that program (see 40 CFR 98.416(c)(1) (reporting requirement for bulk imports of fluorinated GHGs); see also 86 FR 9059, 9063, February 11, 2021) (''Under the [GHGRP], each importer and exporter of [HFCs] must submit an annual report that includes total mass in metric tons of each [HFC] imported and exported, including each [HFC] in a product that makes up more than 0.5 percent of the product by mass.''). Also, when allocating allowances, EPA assigned consumption allowances to companies by relying largely on historical data reported to the GHGRP, which included historical imports of HFCs within blends. Given that regulated substances within blends were part of the baseline calculation and that historic imports of regulated substances within blends are considered in the allocation of allowances, there is no unfairness in requiring the expenditure of allowances for future imports of regulated substances within blends. On the contrary, if allowances are not required for the regulated substance components of a blend, then the allowance program will not operate as intended. That would mean that the number of available allowances is higher than otherwise due to historical imports of regulated substances within blends but that allowances need not be spent for future such imports. Such a mismatch would undermine the Congress's statutory phasedown scheme.

EPA disagrees with the commenter's contention that an HFC blend is an entirely different substance than if the chemical components were still in their single substance state. The Agency notes at the outset that the commenter's use of terms like ''feedstocks'' and ''manufacturing'' [29] diverges from the Agency's use of those terms. Creating a blend is a completely different process from producing HFCs in the first instance, in which feedstock chemicals are entirely consumed as part of a production process. As described in the materials provided by the commenter, the blending process may create an azeotropic mixture among the constituent single component HFCs that functions in some ways like a single substance (*e.g.,* the entire mixture has the same boiling point). The Agency notes that an azeotropic mixture exists in a vapor-liquid equilibrium based on interactions among the constituents, but the individual components are not transformed and no new substance is produced. Regulated substances do not lose their identity when they become part of a blend. As explained initially in the response to comments to the Allocation Framework Rule, available in the docket for that action, the components in a blend (and the amount of each component) can be identified after blending and separated through technology such as fractionation and distillation. (see ''Response to Comments'', pg 193, Docket ID No. EPA–HQ–OAR–2021–0044). De-constituting a blend, while it may involve reprocessing and upgrading recovered substances through mechanisms such as filtering and drying, *does not require individual constituents of the blend to undergo any chemically transformational changes.*[30] Because the creation of a blend does not create a new chemical, and the components are not chemically altered in the process, separating a blend simply results in unpackaging the individual components. Through blending, the components form a mixture, not a new compound, and no chemical bonds are formed or broken in the blending. Unlike the production of regulated substances, in which a feedstock chemical can be entirely consumed as part of the production process, HFC components remain in the blend and are discernable using technology such as refrigerant analyzers or gas chromatography. Creating a blend merely involves repackaging existing molecules of HFCs in various ratios. The commenter has not disputed these facts on the record aside from blanket, unsupported statements.

EPA is finalizing the proposed revision to 40 CFR part 84.5(b)(1) to more explicitly reflect the existing requirement to expend allowances for import of bulk multicomponent substances equivalent to the EVe quantity of components that are regulated substances and are contained within the blend. As an example, R–410A is a common refrigerant in air

[29] For example, the commenter claims that ''[t]he original HFCs *feedstocks* that were used to *manufacture* the blend lose their individual identity and become part of a new substance'' (emphasis added).

[30] See, *e.g.,* EPA's draft October 2022 report, ''Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices,'' available at *https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0002.*

conditioning and heat pump applications and is composed of an equal mixture of HFC–32 (difluoromethane) and HFC–125 (pentafluoroethane). HFC–32 and HFC–125 are regulated substances with exchange values of 675 and 3,500, respectively. 100 kg of R–410A contains 50 kg each of HFC–32 and HFC–125. The exchange value of 100 kg of R–410A is the sum of the exchange value of the individual components, *i.e.,* 208,750 kg EVe (50 * 675 + 50 * 3500) or 208.75 MTEVe. An entity must expend 208.8 allowances to import 100 kg of R–410A.

While not a blend, the Agency also wishes to provide additional clarity on whether refrigerant that contains oil or lubricant would qualify as a bulk regulated substance. EPA's regulatory definition of ''bulk'' is codified in 40 CFR 84.3, and reads in part, ''. . .A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.'' Most regulated substances sold as refrigerants also contain a small amount of lubricant or oil. These lubricants are necessary for the correct functioning of the refrigerant in a air-condition, refrigeration, or heat pump system. The Agency is clarifying that regulated HFCs containing lubricants or oil are considered bulk regulated substances as the HFC must first be transferred a container to a piece of equipment in order to realize its intended use as a refrigerant. This is consistent with the preamble discussion on the same subject in the Allocation Framework Rule (86 FR 55129). Allowances are necessary for the production or import of these containers of regulated substances with oil or lubricant.

D. Consideration of Presumed Amount for Heel Imports of Unknown Quantity

As established under 40 CFR 84.5(b)(1)(i), any import of bulk regulated substances in any quantity, including heels, requires the expenditure of allowances equal to the exchange-value weighted equivalent of the regulated substances imported. EPA made clear in the Allocation Framework Rule that the Agency was ''requiring imports of heels to involve allowance expenditure'' because ''EPA sees no statutory basis to exempt imports of heels from the requirement to expend allowances.'' (86 FR 55183). A heel is ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container)'' (40 CFR 84.3).[31] Some entities have expressed concern that there may be situations where an entity does not know the precise weight of the heel imported until the container arrives at the entity's U.S. facility. Because the heel is the residual remainder left in a container, entities should know the type of regulated substance of which the heel is composed, so EPA understands this concern to be that an entity may not know the precise volume or weight of regulated substance remaining. An entity needs to know the volume or weight of the heel to calculate the number of allowances necessary to expend for the import of that heel.

To address this potential concern, EPA proposed to establish a standard presumption of an HFC heel content of 10 percent of the total potential volume of that container in EVe terms, if the heel weight has not been measured or documented prior to import. Under the proposed approach, the entity would also have utilized the 10 percent presumption for the advance notification requirement of 40 CFR 84.31(c)(7). Given the possibility that an importer could have used this provision to underreport how much HFC they are importing (*e.g.,* claiming a heel when the container holds more HFC than 10 percent of the volume of the container), EPA stated that it could presume the container is full unless the importer demonstrates otherwise, such as with records documenting the actual weight. The Agency also requested comment on whether a provision like this was needed or if importers had resolved the early concerns with determining the heel weight prior to import.

As an alternative, EPA also noted in the proposal that it was considering an option of allowing the importer of record to submit a provisional estimate of the quantity of heel imported, but requiring within a two-week period that the provisional estimate be corrected to match the exact amount of the imported HFC heel content. EPA invited comment on how this alternative option could align with the proposal to codify the point in time that an allowance must be expended to import regulated substances. The Agency noted that it was unsure how and when allowances would be expended under this provisional estimate model, and if allowances are expended based on the provisional estimate, how expended allowances would be reconciled with the corrected exact amount of imported heel. EPA also stated it had concerns of what the enforcement implications of this approach would be and sought comment on whether such an approach would create avenues for an entity to illegally import that are not currently present under EPA's existing regulations.

In response to EPA's request for comment on whether a provision like this was needed, one commenter stated that large containers such as isotanks, tank trailers or rail cars typically have measured weights and that it expected smaller ton tanks and cylinders (*e.g.,* 30 pound cylinders typically used for servicing) would be more likely to use such a provision. However, the commenter did not specify or document why this would be the case. The commenter did not provide justification, aside from unsupported assertions, of why practical considerations of weighing heels in small tanks and cylinders would be different from larger containers. Even if certain current business practice does not include the routine weighing of smaller ton tanks and cylinders prior to imports of heels to the United States, EPA is unaware of, and the commenter did not explain, why these business practices could not be changed to ensure that such imports are weighed. As a result, EPA does not agree that the Agency needs to make revisions to our existing provisions to address the issue at this time.

Commenters did not think the proposed 10 percent standard presumption was appropriate and recommended a lower number. They asserted that 10 percent is higher than the typical heel content. Some commenters supported the proposal to establish a standard presumption under different conditions. One commenter recommended a 5 percent presumed heel volume and other commenters suggested in a general way a significantly lower presumption. EPA acknowledges commenters' opposition to a 10 percent presumption and support for a standard presumption under different conditions; however, the Agency is not finalizing a standard presumption in any case, regardless of the quantity being imported. EPA proposed the standard presumption at the 10 percent level as an inherently conservative estimate of what quantity would be a heel in a container, but commenters note that this presumption may be too high for some imports of heels. Using this presumption could

[31] EPA views this as an amount that is no more than 10 percent by weight of the amount of that same substance that is typically sold in a ''full'' container of that size. For example, if a ''full'' cylinder of HFC–134a typically contains 25 pounds of HFC–134a, then 2.5 pounds or less of HFC–134a remaining in the cylinder would be considered a heel.

result in importers expending more allowances than were needed for the import if the actual heel volume was below the standard presumption. While any presumption is open to abuse, lowering the presumption makes it more likely that fewer allowances are expended than would normally be required if the heel amount was actually higher. This would be especially true if EPA does not revise the definition of heel to lower the percentage from 10 percent. For example, if a heel can be up to 10 percent by volume, but the standard presumption for imports is five percent, an importer could underreport by up to five percent of the volume and not violate EPA's regulations. Such an approach would be contrary to corresponding prohibitions in subsection (e)(2)(A)(ii) of the AIM Act and 40 CFR 84.5(b)(1)(i). The Agency noted concern for the potential to circumvent expending the necessary allowances if the Agency were to adopt a lower standard presumption. Commenters did not provide information which would alleviate EPA's expressed concerns that importers could use this provision to underreport the amount of HFCs they are importing and not expend the correct corresponding number of allowances. As a result, EPA is not finalizing any changes and is not establishing a standard presumption or a change to the definition of ''heel.''

Several commenters supported EPA's alternative approach contemplating consideration of allowing a provisional period to measure, report, and expend allowances for heels that are not measured prior to import. However, the commenters stated that a two-week provisional period to report the measured weight was too brief due to geographic and logistical concerns. The commenters suggested instead a three-week provisional period. One commenter stated without supporting information that the smaller shipments most likely to use such a provision would need the additional time to reach their destination and be weighed. Commenters who supported a provisional period suggested that entities could submit corrected weight information to EPA electronically. EPA acknowledges commenters' interest in the idea that EPA introduced at proposal regarding a provisional period, but the Agency remains uncertain how this proposal would align with the requirement which we are finalizing in section V.A of this preamble which specifies the point in time that an allowance must be expended for an import. Even if EPA were not codifying a requirement that allowances must be expended at a specific point in time, existing requirements under 40 CFR 84.5(b)(1)(i) prohibit any import of bulk regulated substances in any quantity, including heels, without expending allowances equal to the exchange-value weighted equivalent of the regulated substances imported. It is also unclear to the Agency how the electronic notification and recorded transactional data would be validated for shipments which have already been imported and received. Commenters did not provide information that reconciled these concerns.

Several commenters supported combining a standard presumption with a provisional estimate. One commenter stated that a 10 percent presumption could apply if the provisional value were not corrected and two commenters suggested standard presumptions lower than the 10 percent level. EPA maintains the same concerns as described above in this section regarding a lower standard presumption and provisional estimate. As noted, there is the potential that a standard presumption lower than 10 percent could result in insufficient expenditure of allowances when compared to the exchange-value weighted equivalent of the regulated substances imported. EPA also maintains concerns with the provisional estimate regarding how and when allowances would be expended and how expended allowances would be reconciled with the reported amount of imported heel. This would have implementation and enforcement challenges and is open to abuse, especially given the final weight would be measured after the import has occurred and at a private facility away from the port.

As noted in the Allocation Framework Rule (86 FR 55183), imports of heels require allowance expenditure, and heels in containers can be weighed to determine the mass of regulated substance and the requisite allowance expenditure. As discussed above in this section, EPA is unaware of why existing requirements may be impracticable and commenters did not resolve the Agency's concerns with the potential of underreporting or abuse of the proposed and recommended revisions to these requirements. In response to a request for comment, commenters did not provide information supporting the need for a revision to existing practices. As noted earlier in this section, commenters widely opposed the primary proposal's 10 percent presumption as higher than warranted and EPA disagrees that a lower standard presumption would be warranted. The Agency remains uncertain of how a provisional period would interact with allowance expenditure requirements and commenters did not resolve EPA's expressed concerns in the Allocation Framework Rule and this rulemaking's proposal about the potential for abuse of associated provisions. Considering the adequacy of existing requirements, the adverse comments received to EPA's primary and alternative proposals, and the Agency's expressed concerns, EPA is not finalizing either the primary or alternative proposals, nor making any changes regarding the import of heels. In the absence of any changes, existing requirements under 40 CFR 84.5(b)(1) to expend allowances equal to the exchange-value weighted equivalent of the heels imported still apply. Furthermore, the requirement under 40 CFR 84.31(c)(7) to include the quantity (in kilograms) in the advance notification of import requirement still applies, and section XI.A.2 of this preamble establishes additional requirements to specify net weight (or net product weight) and gross weight (net weight plus container weight), as well as unit of mass (*i.e.,* kilogram), for each container in the shipment in the pre-import notification.

EPA reiterates that it did not propose and is not finalizing any changes to the export requirements for heels, so exporters are required to know the precise quantity of HFCs in a heel for an export, just as importers are required to know the precise quantity of HFCs in a heel that is being imported. EPA was clear in the proposed rulemaking that its proposals on the topics of heels would only apply to imports of HFCs and that EPA was not proposing to change the requirement to know the quantity of HFCs in a heel for an export. Further, anyone requesting an additional consumption allowance under 40 CFR 84.17 and anyone exporting HFC heels must continue to report the actual weight of a heel that is exported.

VI. How is EPA clarifying and revising recordkeeping and reporting requirements?

EPA established recordkeeping and reporting requirements in the Allocation Framework Rule, in accordance with subsection (d) of the AIM Act. These requirements can be found in 40 CFR 84.31. The Agency proposed to make amendments to certain recordkeeping and reporting requirements as well as proposing new recordkeeping and reporting requirements based on experience gained in implementing the HFC phasedown. EPA is finalizing some of these proposals.

A. How is EPA modifying the import reporting requirements?

In the Allocation Framework Rule, EPA established reporting requirements for importers at 40 CFR 84.31(c). In this action the Agency is finalizing amendments which include specifying reporting obligations that fall to the importer of record, modifying elements of the advance notification requirement, and clarifying how to consider import of heels. EPA is finalizing all these amendments to provide additional detail on requirements and further promote transparency and consistency in implementation and enforcement of the HFC Phasedown program.

1. Specify Reporting Obligations on the Importer of Record

To align with the proposal discussed in section V.B of this preamble that only the importer of record may expend allowances for the import of bulk regulated substances, EPA proposed to specify that certain reporting obligations fall to the importer of record. Specifically, EPA proposed that the importer of record, or their authorized agent,[32] would be required to file the advance notification report pursuant to 40 CFR 84.31(c)(7), and the importer of record will be required to make quarterly reports pursuant to 40 CFR 84.31(c)(1). EPA received no adverse comments on this proposal and is finalizing the changes as proposed. EPA is making these amendments to improve clarity of who must fulfill certain reporting requirements with the Agency and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import.

2. Modify Advance Notification of Import Requirements

EPA's regulations contained in 40 CFR 84.31(c)(7) require ''[a] person importing a regulated substance, or their agent,'' to report certain information ''no later than 14 days before importation.'' The regulation enumerates several required elements that must be included in an advance notification of import filed through the CBP-authorized electronic data interchange system, such as the ABI. To align with the proposal that only the importer of record may expend allowances for the import of bulk regulated substances, EPA proposed to specify that the advance notification reporting obligation falls to the importer of record, or their authorized agent.

One commenter alleged that EPA was in effect deeming brokers as importers of records with the associated responsibilities and liabilities. The commenter stated that a customs broker is not an importer of record and asked EPA to distinguish between the importer of record and their agents, in particular making clear that the importer of record is responsible for the accuracy of information provided.

EPA is finalizing the regulatory change as proposed to specify that the advance notification reporting obligation falls to the importer of record, or their authorized agent. This change in the regulatory text is intended to improve clarity of who must submit the advance notification reports and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import. However, in response to the comment received, EPA is making a minor adjustment to clarify the Agency's intent with this change to make clear that the obligation to file the advance notice falls to the importer of record. Due to existing business relationships, as outlined in footnote 31, if the importer of record so chooses, the advance notice may be filed by the importer of record's authorized agent. However, the authorized agent is not liable if the importer of record fails to meet this reporting requirement.

EPA proposed to add required elements pursuant to 40 CFR 84.31(c)(7). For all modes of transport, EPA proposed to require the container number(s) of the shipment (if applicable). EPA also proposed that for maritime shipments, the vessel name and the International Maritime Organization (IMO) number must be included as part of the advance notification. Some commenters stated that they were not in favor of EPA's proposal for reasons such as not being clear what the additional reporting elements would bring to EPA or arguing that the additional elements would be overly burdensome since shipment specific information was already required to be submitted to CBP. One commenter also noted that some information, such as the IMO number, may not be available to the importer at the time of the advance notification. After considering these comments, including consideration of the existing EPA and CBP reporting requirements and associated data points, EPA agrees with commenters that the IMO number and vessel name are data elements that are largely duplicative of already available information. Accordingly, EPA is not finalizing that aspect of the proposal. However, EPA is finalizing the proposal to add the container number associated with the shipment (as applicable) as a required element for the advance reporting notification. Based on review of our existing data, EPA deems this information is useful for confirming imports that arrive in large tank containers with capacities in excess of 15,000 kg (often referred to as ISO (International Organization for Standardization) tanks), especially as EPA creates a future container tracking system. Having ISO tank container numbers included in advance reporting notifications will assist EPA in aligning the future container tracking system numbers with the ISO tank container numbers that are reported to CBP.

EPA's current regulations in 40 CFR 84.31(c)(7) require provision of the ''quantity'' (in kilograms) of each import in the advance notification of import. To improve clarity in the Agency regulations and provide for consistent treatment across regulated entities, EPA proposed to specifically require the provision of both the net weight (or net product weight) and gross weight (net weight plus container weight), as well as unit of mass (*i.e.,* kilogram), for each container in the shipment in the pre-import notification. Some commenters supported this proposal as a helpful clarification. A few commenters did not support the requirement to provide the gross weight in the pre-import notification; one argued the gross weight of the container does not serve a purpose when reporting or tracking HFC consumption. Some of these commenters were also opposed to providing the unit of mass, arguing that providing it would be duplicative and overly burdensome since there is shipment specific information required to be submitted to CBP prior to importation that includes this information. EPA is finalizing this requirement as proposed, specifically to require entities to include reporting of net and gross weight, as well as the unit of measure for each, in their advance notification report. EPA is finalizing inclusion of all three of these elements to resolve ambiguity and standardize reporting. Even if some of this information is submitted to Customs, net weight and unit of mass are needed for the Agency to confirm how many allowances will be required to expend for an upcoming import. Gross weight can be, among other things, a helpful

[32] For purposes of providing advance notification of import through a system such as the ABI, the vast majority (if not all) notifications for the imports of regulated HFCs have been filed by customs brokers who are licensed and regulated by CBP to assist importers and exporters in meeting Federal requirements governing imports and exports. EPA included ''authorized agents'' as permissible reporting entities to accommodate this standard business practice.

indicator as to what type of container a bulk HFC shipment will arrive in and this information can be used to assist EPA and partner agencies in identifying at an earlier stage in the overall import process potentially violative shipments of bulk HFCs. This data is especially useful if the net and gross weights appear inconsistent for the specific HFC or HFC blend reportedly being imported. These disaggregated data elements can also be particularly important in situations where it may not be apparent from shipment documentation whether the reported weight value consisted of the net weight of the imported HFCs or the gross weight of the container. In other words, having both the net and gross weights also allows EPA to better confirm the accuracy of the reported data and ensure the accurate number of allowances is being expended.

Currently 40 CFR 84.31(c)(7) requires the submission of advance notification ''no later than 14 days before importation'' of any regulated substance. EPA made clear in footnote 97 of the preamble of the Allocation Framework Rule that ''EPA is using the term 'date of importation' consistent with CBP's definition at 19 CFR 101.1'' (86 FR 55182). To ensure consistency EPA proposed to amend 40 CFR 84.31(c)(7) to clarify that our reference to ''before importation'' in the Allocation Framework Rule means ''before the date of importation (consistent with the definition at 19 CFR 101.1).'' EPA also proposed to clarify in 40 CFR 84.25(a)(1)(v) and 40 CFR 84.31(c)(3)(i)(D) that these references are consistent with the definition at 19 CFR 101.1. EPA did not receive adverse comment on these clarifying edits and is finalizing these revisions as proposed. The ''Import Date'' box on CBP Form 7501, ''Entry Summary,'' as well as CBP Form 214 for entries where importers are applying for foreign-trade zone admission and/or status designation may provide information about the date of importation, but it is the importer's obligation to ensure that it has submitted its advance notification report in a timely manner regardless of the date identified in the Import Date box on these forms. The Agency notes that the requirement of advance notification prior to the date of importation does not preclude entities from following other established and required processes from CBP, including but not limited to the submission of CBP Form 3461 (Entry/Immediate Delivery for ACE). EPA also reiterates that all imports of bulk HFCs, regardless of value, must be filed in a manner that allows for the required advance notification.

As noted earlier in this subsection, the regulations finalized in the Allocation Framework Rule require prior notification no later than 14 days in advance. EPA proposed to distinguish between modes of transport and to shorten the prior notification requirement for truck, rail, air, and other non-sea arrivals to 5 days prior to the date of importation. EPA also noted that the Agency was considering whether to shorten the prior notification for arrivals by sea to 10 days. Some commenters supported EPA's proposal to shorten the prior notification requirement for truck, rail, air, and other non-sea arrivals to 5 days. Some commenters also supported EPA reducing the advance notification timeline for sea arrivals to 10 days, and one even argued for a shorter timeframe. No commenters opposed these shortened timeframes. EPA is finalizing both of these shortened times; advance notification reports will be due 5 days in advance for truck, rail, air, and other non-sea arrivals and will be due 10 days in advance for sea arrivals. Importers bringing in goods via these transportation modes may not have the necessary information available at least 14 days in advance under current standard market practice. However, prior notification is important for EPA and CBP to be able to adequately review the shipment and relevant information. EPA based the 5-day prior notification in part on consultation with CBP about similar notification provisions used by other Federal government agencies and in part on information obtained through our stakeholder meetings that included customs brokers that have experience with importing a range of goods.

EPA also received other comments that did not directly relate to proposed provisions. One commenter requested that EPA explicitly allow that an importer can clear customs as soon as they receive a ''may proceed'' message regardless of whether the requisite timeline has passed from the advance notification requirement. In other words, if an importer of record files their advance notification, arrives at a land border two days later, and receives a ''may proceed'' from CBP, EPA understands the commenter to be requesting that bulk HFCs can be imported at that point as long as the requisite number of allowances are expended for the import. EPA is not making regulatory changes based on this comment. However, for purposes of furthering the public's understanding, EPA also notes that it views the requirements around, and prohibitions on, the action of importing to be separate from reporting requirements. If an entity receives a ''may proceed'' from CBP and expends the requisite allowances for a bulk HFC shipment, that importation action is permissible. However, if the action occurs before the requisite time period has passed following filing of the advance notification report, then the entity would have a reporting violation because they did not file the advance notification report sufficiently ahead of the importation activity.

One commenter requested that shipper/importer names and location ''confidentiality be removed for Customs documents'' filed for regulated substances to help industry monitor for compliance. EPA understands the commenter to be requesting that the Agency not treat certain elements of the advance notification report as CBI. In section IX.C of the Allocation Framework Rule, EPA outlined that certain data elements would not be entitled to confidential treatment (86 FR 55191–55195). Among other things, EPA finalized a determination to not provide confidential treatment to company-level, chemical-specific data on individual import and export shipments, including source country, port of entry, and the importer name and number. For further detail, The Classification of Data Reported Under the HFC Phasedown Rule memo in the docket for the Allocation Framework Rule documents the Agency's determination of whether to provide or to not provide confidential treatment for each individual reported data elements (Docket ID No. EPA–HQ–OAR–2021–0044). EPA did not propose any changes to those determinations, is not revisiting those determinations in this rulemaking, and therefore is not making any alterations in this rulemaking. To the extent that commenter was requesting EPA to alter how CBP handles data, EPA does not have the ability to alter CBP's approach on this issue and invites the commenter to raise any concerns with CBP, as appropriate.

One commenter stated that EPA should revise the term ''Origin'' in the HFC import advance-notice filing to ''country(ies) of Manufacture for regulated substance(s)''. The Agency notes that under 40 CFR 84.31(c)(7)(xi) there is an existing requirement that ''Origin Country'' must be reported as part of the advance notification. EPA's proposed changes to 40 CFR 84.31(c)(7) did not explicitly include modifications to the existing requirement to report ''origin country'' under 84.31(c)(7). EPA is not finalizing any change to that particular data element, but does not believe any change is needed in

response to commenter's concern because EPA interprets this term consistent with CBP's ''Country of Origin'' definition, which is ''the country of manufacture, production, or growth of any article of foreign origin entering the United States.'' [33]

3. Clarify the Reporting of Heels

EPA clarified in its proposal that the HTS Code for a regulated substance, regardless of whether or not comprising a heel, must be used, and not the HTS codes for U.S. goods returned or empty containers. EPA did not make a specific proposal related to this clarification, but rather included this statement in the proposal for this rulemaking to communicate the Agency's expectation clearly to stakeholders and the regulated community. One commenter did note its support for this position and noted its opposition to loopholes that mask illegal trade including the use of HTS code use for U.S. goods returned or empty containers containing illegal refrigerant.

One commenter expressed the opinion that heels do not warrant additional scrutiny because associated losses are negligible and the fact that heels comprise valuable product incentivizes maximum recovery. EPA disagrees with the commenter's characterization that EPA's concern and discussion on heels is unwarranted or that EPA's clarification in the preamble would apply additional scrutiny to heels. Rather, the Agency's clarification explained that consistent requirements for the HTS Code apply to all imports of bulk HFCs, whether those imports comprise heels or more filled containers. In this particular section, the Agency is reiterating that the HTS Code for the regulated substance must be used for the import of any regulated substance. Reporting all volumes of regulated substances with the applicable HTS Code for the contained HFCs regardless of value facilitates accurate treatment of the imports of these regulated substances under EPA regulations.

4. Changes to and Requirement of Importer of Record Information

EPA proposed to require the submission of certain information directly to EPA that had been voluntarily provided, in part, through the importer of record form (EPA Form #5900–556). EPA proposed a regulatory requirement that certain information must be submitted by any entity anticipating being the importer of record for a shipment of regulated substances by November 15 of the prior calendar year. In other words, an entity that anticipates being the importer of record for a shipment of HFCs during calendar year 2024 must submit the required information by November 15, 2023. If an entity is not issued allowances directly from EPA, is the recipient of transferred or conferred allowances and it is impracticable for the entity to submit the importer of record form by November 15, EPA proposed that the importer of record form be submitted within 15 calendar days of receiving the Agency's non-objection notice for conferral or inter-company transfer. EPA also proposed that if changes are necessary on the importer of record form after its initial submission that those changes be made at least 21 calendar days prior to any import of bulk regulated substances for which the concerned entity will be the importer of record after the change in information occurs.

EPA proposed that if an entity receiving allowances (either allocated directly by EPA or through a conferral or transfer) includes subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or ''Doing Business As'' (DBAs) as part of its form, the corporate structure of the entity receiving allowances must also be provided, and the description of the corporate structure must, at a minimum, explicitly show the relationship between the allowance holder and each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA. An entity also would need to provide the owners, and their respective percentage of ownership, of each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and DBA on the submitted form. EPA received no comments on these proposals and is finalizing them as outlined in the proposal for this rulemaking. As explained in the Allocation Framework Rule and reiterated in section VIII.C of this preamble, movement of allowances between a parent company and its subsidiaries, or among companies that are commonly owned, may occur without a transfer (86 FR 55145). However, there may be instances where these corporate relationships are not immediately clear to EPA. The importer of record form provides information on corporate relationships to EPA, and accounting for such instances would ensure not only that allowances are being expended by the right entity, but also that reviews of shipments are not unnecessarily delayed. In a similar manner, entities receiving allowances may operate under different names, *e.g.,* DBA, where it is not immediately clear to the Agency that the DBA is associated with the allowance holder. To further efficient and accurate review of imports by EPA, the Agency reminds regulated entities of the importance of ensuring that when an allowance holder or associated subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA provides advance notification of import filed through a CBP-authorized electronic data interchange system, such as the ABI, that the importer of record number accurately aligns with the name of the importer.

EPA further proposed that an entity would need to indicate on the required Importer of Record form how many allowances will be expended by each other affiliated entity (*e.g.,* subsidiaries, majority owned and/or controlled), specifically a quantity of allowance that will be expended by each affiliated entity identified by name and importer of record number(s). EPA noted that it was considering, as an alternative, requiring information as part of the advance notification requirement of 40 CFR 84.31(c)(7) that would specify which entity was allocated the allowances or received the allowances through a transfer that are associated with an individual shipment. EPA did not receive comment on either of these proposals and is not finalizing these requirements at this time. After consideration of other requirements being finalized in this rulemaking, the Agency has determined that these additional data points are not needed given the finalization of requiring the importer of record form.

One commenter recommended that the ''Importer of Record'' should reflect the name of the allowance holder on HFC import advance-notice filings, customs documents, and quarterly reporting of imports. Another commenter recommended EPA require that all advance notification of import and associated CBP documents specifically list the name of the Allowance Holder as it appears on EPA's allowance allocations as the ''importer of record.'' The commenter further requested that if a sub-entity is involved in the shipment, that name should also be listed along with the name of the Allowance Holder. The commenter believes that requiring this additional information would facilitate tracking of compliance for each participant's consumption allowances. As outlined in section V.B. of this preamble, EPA is finalizing in this

[33] *https://www.cbp.gov/trade/rulings/informed-compliance-publications/marking-country-origin-us-imports.*

rulemaking a requirement that only an importer of record can expend allowances to import bulk regulated substances. Put another way, an allowance holder must be listed as the importer of record on a shipment to expend allowances for that shipment. Finalizing this requirement largely addresses the issue noted by the commenter. In addition, in this section EPA outlines how it is finalizing requirements related to information on importers of record. Specifically, EPA is amending its regulations to require submission of an importer of record form that includes the names of all subsidiaries, entities majority owned and/or controlled by the same individual(s), all DBAs, and any corresponding importer of record numbers, even if the importer of record number(s) is identical for the subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or DBAs as it is for the allowance holder. This change ensures EPA has the relevant information necessary to determine the importer of record has sufficient allowances to import regulated substances.

5. Joint and Several Liability for Importer Reporting Requirements

In section VI.A.1 of this preamble EPA is finalizing its proposal to specify that the importer of record is responsible for advance notification reporting obligation of 40 CFR 84.31(c)(7) [34] and quarterly reporting requirements of 40 CFR 84.31(c)(1). EPA noted in its proposal that such changes to the reporting requirements could have an adverse impact on compliance with and/or EPA's ability to enforce reporting obligations. Accordingly, EPA proposed to apply joint and several liability for violations of the quarterly reporting and the advance notification reporting requirements. Specifically, EPA proposed in 40 CFR 84.31(c)(10) that each person meeting the definition of an importer is jointly and severally liable for a violation of the quarterly reporting requirements at 40 CFR 84.31(c)(1) unless they can demonstrate that the importer of record fulfilled the quarterly reporting requirements, and in 40 CFR 84.31(c)(11), EPA proposed that each person meeting the definition of an importer is jointly and severally liable for a violation of the advance notification requirements at 40 CFR 84.31(c)(7) unless they can demonstrate that the importer of record or their authorized agent fulfilled the advance notification requirements.

EPA did not receive any comments germane to this particular proposal. EPA flagged some potential downsides to this proposal and requested comment on potential reporting difficulties that could be associated with extending joint and several liability for these reporting requirements and on the potential burden or downsides associated with the proposed joint and several liability. Joint and several liability would require individuals involved in the import of HFCs to coordinate to ensure reporting is complete and accurate, so EPA also sought comment on whether additional resources and/or processes would be helpful to support this coordination and prevent duplicative reporting for the same import. Although the Agency did not receive responses to these comment solicitations, after further consideration EPA is not finalizing this proposal to apply joint and several liability for any reporting violations at this time. The importer of record is solely responsible for the advance notification reporting obligation of 40 CFR 84.31(c)(7) [35] and quarterly reporting requirements of 40 CFR 84.31(c)(1). If EPA experiences challenges with enforcement and compliance following finalization of specifying reports must be filed by the importer of record, EPA may revisit this issue in a future rule.

The importer of a regulated substance in 40 CFR 84.31(c)(2) must maintain certain records to document each import. EPA sought comment on whether more specificity is needed than ''importer,'' for example to define that recordkeeping obligations would fall specifically on the importer of record, and took comment on the effectiveness, accuracy, and completeness of the importer bearing responsibility for the recordkeeping in this section. EPA received no comment on this issue, so is not finalizing any adjustment to 40 CFR 84.31(c)(2) at this time.

B. Consideration of Modifying Recordkeeping and Reporting Requirements Regarding Expending Allowances

In the Allocation Framework Rule, EPA codified various recordkeeping and reporting requirements for producers and importers of HFCs in, respectively, 40 CFR 84.31(b) and 40 CFR 84.31(c). In this rulemaking, EPA proposed to add an obligation that producers and importers must maintain same day documentation of any allowances expended, include that record as part of the required quarterly report, and certify to EPA as part of their quarterly reporting that they expended the requisite number of allowances on the dates specified in the form for each date-specific production or import transaction.

Commenters widely opposed the proposed requirements for same day documentation as both overly burdensome and insufficiently justified, and stated that existing recordkeeping and reporting requirements adequately provide the information necessary for EPA to carry out associated inspection and monitoring of allowance expenditures. One commenter stated that EPA's ''allocation tracking digital system'' as established in 40 CFR 84.23 that will begin January 1, 2025, would provide the necessary information. Another commenter stated that an enforceable recordkeeping and certification requirement, in addition to being burdensome, creates an unnecessary enforcement risk in the case of a minor and unintentional error without an associated benefit as compared to existing requirements. One commenter suggested that EPA should require recordkeeping over different time period as opposed to daily.

EPA notes that existing provisions in 40 CFR 84.31(b)(3) and 40 CFR 84.31(c)(2) already require dated records of the information used to determine allowance expenditure. After considering comments received concerning burdens associated with the proposed requirements and the adequacy of existing requirements, EPA is not finalizing these proposals concerning same day documentation of any allowances expended. EPA notes that without any changes, the existing regulations in 40 CFR 84.31(b)(3)(i) already require producers to keep dated records of the quantity of each regulated substance produced at each facility, and under 40 CFR 84.31(c)(2)(v) importers must keep records of the date on which regulated substances were imported, along with a copy of the bill of lading for the import. Additionally, apart and separate from this rule, EPA has inspection and information gathering authorities under section 114 of the CAA, 42 U.S.C. section7414, and the regulations promulgated at 40 CFR part 84.

C. Modify the Reporting of Regulated Substances Produced for Transformation, Destruction or Use as a Process Agent at a Different Facility Under the Same Owner

As noted in this rulemaking's proposal, under 40 CFR 84.31(b)(2)(i)–(iii) EPA required that each producer of

[34] This reporting obligation may permissibly be filed by an importer of record's authorized agent.

[35] This reporting obligation may permissibly be filed by an importer of record's authorized agent.

a regulated substance include in the quarterly report for each facility information on the quantity of each regulated substance produced for use by the producer or a second party in processes resulting in their transformation, destruction, or use as a process agent. There are situations, however, where regulated substances are produced at one facility, but transformed, destroyed, or used as a process agent at another facility owned by the same entity. Such situations are distinct from regulated substances transformed, destroyed, or used at the same facility where the regulated substances were produced and those transformed, destroyed, or used by an entity different from the one that produced the regulated substances. EPA proposed that 40 CFR 84.31(b)(2)(i)–(iii) be modified to include requirements to report the name, quantity, and recipient facility for regulated substances produced at one facility for, correspondingly, transformation, destruction, or use as a process agent at another facility owned by the same entity. One commenter expressed its general support for the proposal, and another commenter noted that this reporting would provide greater transparency. EPA did not receive adverse comments on this proposal.

EPA is finalizing these proposed modifications to the reporting of regulated substances produced for transformation, destruction or use as a process agent at a different facility under the same owner. Since EPA requires the names and quantities of transformed or destroyed regulated substances produced or imported by another entity to be reported at the facility level under 40 CFR 84.31(e)(1), these revisions to these sections will establish consistency within the regulations under 40 CFR part 84. Furthermore, these revisions will provide greater transparency within the system and better align with current AIM Act reporting forms and the GHGRP, both of which track transformation, destruction, and use as a process agent by facility. This facility-level reporting will increase transparency, such as for environmental justice concerns, so that local communities have better insight into how regulated substances may move between facilities owned by a single entity. Such information will also provide EPA a better understanding of industry practice, help verify disposition of regulated substances, and may inform future rulemakings.

D. Considered Additional HFC Production Facility Emissions Reporting Requirements

EPA stated its intention in the Allocation Framework Rule to ''continue to monitor the impacts of [the HFC phasedown] program on HFC and substitute production, and emissions in neighboring communities, as we move forward to implement this rule'' (86 FR 55129). As noted, previously, there is significant uncertainty about how the phasedown of HFC production and the issuance of allowances by themselves, as well as the interactions with market trends independent of this rulemaking, could affect production of HFCs and HFC substitutes—and associated emissions—at individual facilities, particularly in communities that are disproportionately burdened by air pollution. EPA continues to be concerned about the potential for environmental justice concerns due to the release of toxic chemicals that are feedstocks, catalysts, or byproducts in the production of HFCs or HFC substitutes.

To help inform EPA's ability to track emission changes over time, EPA proposed to build on the one-time reporting requirement and require annual reporting of HAP, ODS, and HFC emissions from each facility's HFC production line emissions units (86 FR 55129). In the proposal, the Agency explained that the reporting requirements could provide data on the impacts of HFC production and inform policies, regulations, and other decisions, including to carry out EPA's commitment to environmental justice. In the proposal, EPA stated that it was considering a range of options to apply to determine the emissions required to be reported under this proposed approach, including continuous emissions monitoring systems, stack testing, material balance, EPA emission factors, or the compliance method required under the most recent permit issued to the facility pursuant to 40 CFR part 70 or 40 CFR part 71, under the facility's operating permit for sources without a permit under 40 CFR part 70 or 40 CFR part 71, or using federally recognized procedures if emissions cannot be determined using the compliance methods from the facility's air permit. EPA also sought comment on whether fenceline monitoring would be appropriate. Further, EPA sought comment on the advantages and disadvantages of this approach, what metrics should be reported, and how EPA could use this data to better understand the role that HFC production plays in emissions of HAP, HFCs, and ODS. Specifically, EPA sought comment on which singular option for determining emissions, as listed above, would allow for effective monitoring of these emissions. EPA also requested comment on methods of emissions estimation or monitoring currently in practice and whether those methods are appropriate for monitoring emissions at HFC production facilities. EPA also requested comment on whether it would be appropriate or feasible to require each facility producing an HFC to report on an annual basis the quantity of each criteria air pollutant, and its precursors, for which EPA has established a National Ambient Air Quality Standard, emitted by the facility and the quantity of each such pollutant emitted annually from each HFC production line on an emission unit basis. EPA also took comment on whether the data listed in the proposal for additional reporting are already required under different authorities.

A few commenters were supportive of the proposal to require annual reporting from HFC production facilities' emissions units and requested that EPA extend the requirement to reporting on emissions from the production of HFOs and other HFC substitutes, as well as criteria pollutants and precursors. The commenters shared publicly available facility-level emissions data from HFC production facilities and agreed that requiring unit-specific emissions data would assist efforts to meaningfully conduct analyses and address potential concerns. The commenters further stated that emissions from production of HFC substitutes, whether collocated with HFC production facilities or located separately, are also important considerations when evaluating overall emissions and community risks. The same commenters generally supported the requirement for facilities to use the continuous emission monitoring systems approach for estimating these emissions. One commenter noted that CAA section 114(a) provides ample authority for proposed unit-specific requirements, and for expanding those requirements. EPA acknowledges commenter's supportive comments and requests to broaden the requirements proposed, but also notes that the commenters did not substantively address EPA's questions outlined in the proposal about whether such requirements would allow EPA to effectively monitor HFC production-related emissions at these facilities and how they might be finalized in this action. Other commenters opposed EPA's proposal regarding these annual

reports. Commenters stated that the costs associated with the proposed monitoring and reporting requirements were too great compared with the benefits, the proposed monitoring and reporting requirements were duplicative, or that current monitoring and reporting requirements were sufficient. Many of these comments also expressed concerns that if the reporting requirement proposal were implemented, it would disproportionately impact U.S. producers over foreign counterparts. One of these commenters stated that EPA did not provide documentation to support the Agency's claim of examining other sources of data, such as the National Emissions Inventory and the Toxics Release Inventory (TRI). The commenter also stated that the proposed reporting requirements do not appear to be contained in EPA's Information Collection Request (ICR) Supporting Statement, and that it was not apparent that EPA has described its authority to collect such data, indicated the utility/users of the data, addressed non-duplication, consulted adequately with stakeholders, or examined the effects of less frequent collection.

The Agency did not receive comments that were explicitly in favor of fenceline monitoring requirements, but several commenters opposed EPA's consideration of fenceline monitoring. One comment specific to fenceline monitoring stated that fenceline monitoring would not be meaningful for assessing environmental justice for certain facilities, due to the surrounding area being rural and majority White. Commenters also described challenges associated with fenceline monitoring, such as the difficulty in separating facility emissions from other sources in the area. Comments also stated that EPA had not provided sufficient notice of proposed monitoring requirements.

The Agency also received numerous comments contending that EPA does not have sufficient legal authority to implement emissions monitoring and reporting requirements proposed. One commenter stated that CAA sections 112(d) and (f) are more appropriate programs to regulate HAP emissions from HFC or HFO production facilities, specifically National Emission Standards for Hazardous Air Pollutants requirements under 40 CFR part 63, subparts F, G, H, and I. Many commenters who opposed the reporting requirements generally stated that these proposed reporting requirements fell outside EPA's authorities under the AIM Act and CAA, and in particular, EPA did not have the authority to require reporting on emissions other than HFCs. Another commenter stated that EPA's reasoning for collecting more emissions data is inconsistent with proposed obligations. They further explained that EPA is interested in identifying disparate impacts from the phasedown, but the proposal to gather emissions data would only gather information from U.S. producers of HFCs; thus, HFC emissions would decrease while emissions from HFC substitutes would increase, and the consideration of the impacts from production of HFC substitutes is missing from the proposal.

At this time, EPA is not finalizing the proposal to require reporting on annual emissions of HAP, ODS, and HFC emissions from each facility's HFC production line emissions units or require fenceline monitoring. The decision to not finalize the proposed requirements was made in part because of the Agency's evaluation of the comments we received and the determination by the Agency that additional analyses by EPA are necessary to consider other reporting requirements. Some of the areas that EPA would like to consider more thoroughly include technical aspects of emissions reporting and monitoring and associated costs and benefits. As noted at proposal, the Agency is aware that emissions data reporting is required for some larger facilities, and can be obtained, at the facility- or process-level, through the National Emissions Inventory (NEI), TRI, and Title V permits. EPA has analyzed some of this data and provided it in Chapter 6 of the RIA Addendum accompanying this final rule. Further, EPA has updated the final RIA Addendum based on information received in the one-time producer reports submitted in 2022. The Agency will continue to assess emissions data already reported by HFC production facilities under existing requirements and what data, or level of data quality, would still be meaningful to assess any emissions trends related to HFC production or changes in production based on the phasedown. If additional data is needed, EPA will consider the best mechanism, including a targeted CAA section 114 information collection request for additional data from production facilities, and authority for collecting emissions data. The Agency may also consider the costs of various emissions monitoring systems and the resulting data quality; current industry practices, operations, and controls; the link between production of HFCs and emissions, including where a facility may switch which HFC is produced; and the relationship between the production of HFCs and HFC substitutes. This type of information may allow EPA to better identify if there are data gaps and determine how best to address any gaps. Because the Agency is not finalizing this proposal at this time, EPA is not responding to the comments in this action, but we anticipate further considering the comments before taking any potential future action.

VII. How is EPA revising sampling and testing requirements?

In the Allocation Framework Rule codified at 40 CFR 84.5(i), EPA established the requirement to label containers containing a regulated substance that are sold or distributed, or offered for sale or distribution, and for certain entities to confirm the accuracy of the labels by testing a representative sample of contents to verify that the composition matches the container label. In that section of the regulation, the Agency also codified a prohibition on the sale or distribution of regulated substances for use as a refrigerant that did not meet specifications in appendix A to 40 CFR part 82, subpart F. In this rulemaking EPA proposed to establish additional verification requirements and codify procedures to test a representative sample.

Specific testing requirements create a consistent approach that smooths implementation and provides greater assurance on the accuracy of these container labels. Representative sampling provides a means to verify that a collected sample represents all components of the tested regulated substance and uses this smaller sample to infer that the composition of regulated substances within a wider population of cylinders matches the composition of the collected sample. The requirement to undertake sampling and testing, and defining specific methodology and requirements for sampling and testing, are important to provide clarity and direction to regulated entities, ensure that individual labels accurately reflect the contents of bulk regulated substances within containers, and reduce the frequency that mislabeled, misrepresented, or off-specification regulated substances enter commerce.

EPA proposed to (1) modify 40 CFR 84.5(i)(3)(i) to add that already required sampling and testing of regulated substances must follow a combination of appendix A to 40 CFR part 82, subpart F, and EPA Method 18 in Appendix A–6 to 40 CFR part 60 to verify the label composition for all applications; (2) add a requirement to sample and test under specified methodology to ensure compliance with the existing requirements concerning

specifications in 40 CFR 84.5(i)(3)(ii); (3) define the records required under 40 CFR 84.31 associated with testing and add recordkeeping requirements to 40 CFR 84.31 [36] for fire suppressant recyclers and repackagers to ensure results from required testing are maintained; (4) add definitions at 40 CFR 84.3 of ''batch'' and ''representative sample'' and clarify the relationship between these terms; (5) add a definition at 40 CFR 84.3 for ''laboratory testing'' such that laboratories used by regulated entities to meet the existing requirement in 40 CFR 84.5(i) must be accredited and follow the test methods in appendix A to 40 CFR part 82, subpart F, and EPA Method 18 where appropriate; and (6) add a requirement that certificates of analysis accompany all imports of regulated substances.

EPA is finalizing these provisions with some modifications based on comments received on the proposed rulemaking.

A. Sampling and Testing Methodology Requirements

In the Allocation Framework Rule EPA established sampling and testing provisions in 40 CFR 84.5(i) that addressed verification of the contents of repackaged regulated substances that were initially unlabeled or mislabeled (40 CFR 84.5(i)(2)), compositions of regulated substances (40 CFR 84.5(i)(3)(i)), and specifications of regulated substances used as refrigerants (40 CFR 84.5(i)(3)(ii)).

i. Sampling and Testing

In appendix A to 40 CFR part 82, subpart F, EPA codified a modified version of AHRI 700–2016, Specifications for Refrigerants. AHRI 700 standards have been widely applied to analyze HFCs in a variety of contexts. Appendix A to 40 CFR part 82, subpart F contains requirements and procedures of how to sample and test specified single component and multicomponent regulated substances used as refrigerants (as listed in section 2 of appendix A to 40 CFR part 82, subpart F). Section 5 of appendix A to 40 CFR part 82, subpart F contains applicable sampling and testing procedures. Sampling requirements describe how to obtain samples for analysis and how to conduct sample preparation for testing. Testing methods describe how to analyze samples and ensure adherence with composition and specification requirements. General testing requirements to ensure accuracy of the tests are included in section 5 of appendix A to 40 CFR part 82, subpart F. Specific measurements, such as the boiling point or critical point, are used to characterize the regulated substance. Characteristics and limits of allowable contaminants are listed for specific HFCs and HFC blends in section 6 of appendix A to 40 CFR part 82, subpart F.

EPA did not identify such sampling and testing methodologies particularly designed for or widely applicable to certain regulated substances used as non-refrigerants. In appendix A to 40 CFR part 82, subpart F, EPA incorporated by reference the 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014. Parts 7 and 9 of the 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014 contain sampling and testing methodologies that apply to a listed set of HFC refrigerants, including HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a, HFC–134a, HFC–143, HFC–245fa, HFC–32, and HFC–152. These testing methods can also be applied to non-refrigerant uses of the same HFCs. HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, and HFC–43–10mee are not included among the list of HFCs that these testing methods apply to. Other approaches to test HFCs include EPA emission testing methods and ASTM standards. At proposal, EPA described that EPA Method 18 appears to be appropriate for the HFCs regulated under the AIM Act, including those not listed in the 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014, and would provide a well-established standard used in other EPA regulatory programs.

EPA codified requirements in 40 CFR 84.5(i)(3)(i) that sampling must be done consistent with appendix A to 40 CFR part 82, subpart F for regulated substances sold or distributed or offered for sale and distribution as refrigerants. EPA requires in 40 CFR 84.5(i)(3)(i) that entities verify that the composition of regulated substances matches the container labeling by testing a representative sample of contents, but EPA did not require that test methods for refrigerants be consistent with appendix A to 40 CFR part 82, subpart F, and the Agency did not specify the sampling or testing methods that must be used for regulated substances for non-refrigerant uses.

EPA proposed revising 40 CFR 84.5(i)(3)(i) to add requirements to use the testing methodology prescribed in appendix A to 40 CFR part 82, subpart F for regulated substances offered for sale and distribution as refrigerants and the following sampling and testing methods [37] for regulated substances offered for non-refrigerant uses:

TABLE 3—PROPOSED NON-REFRIGERANT REGULATED SUBSTANCE SAMPLING AND TESTING METHODS

Regulated substance	Sampling and testing method
HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a	Part 7 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in appendix A to 40 CFR part 82, subpart F.
HFC–134a, HFC–143, HFC–245fa, HFC–32, HFC–152	Part 9 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in appendix A to 40 CFR part 82, subpart F.
HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–43–10mee.	EPA Method 18; appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

EPA also requested comment on whether EPA Method 18 is an appropriate sampling and testing method to require for HFCs that are not covered in the requirements in appendix A to 40 CFR part 82, subpart

[36] These two references to the required records and added recordkeeping requirements were incorrectly listed as 40 CFR 84.33 in this rulemaking's proposal at 87 FR 66392, but it was clear contextually that EPA was referring to recordkeeping provisions in 40 CFR 84.31, as directly stated in the proposal's preamble section VII.B at 87 FR 66394 and in the proposed regulatory text at 87 FR 66407–66408.

[37] Although EPA's proposal referred to proposed ''testing methods'' for regulated substances offered for non-refrigerant uses, testing methods also include prescribed sampling provisions that are appropriate for the given testing methodology. For clarity, in this final rule EPA is referring to these finalized requirements as sampling and testing methods, though sampling is already encompassed in testing methodologies.

F, *i.e.,* HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–43–10mee, as proposed and listed in Table 3 of this preamble above, or if EPA could rely on appendix A to 40 CFR part 82, subpart F, including appendix A1 and the incorporated appendix C to AHRI Standard 700–2014, for all sampling and testing requirements.

One commenter supported the proposed sampling and testing requirements. Other commenters stated that existing practices sufficiently ensure that composition and specification standards are met without codifying further requirements. The commenters that opposed the proposed testing requirements cited concerns about burden, feasibility, and potential implications on business operations. One commenter suggested an analysis that would focus on organic purity and composition for purposes of confirming the identity of imported regulated substances should be used rather than EPA codifying required sampling and testing methodology such as the AHRI 700 standard specification incorporated into appendix A to 40 CFR part 82, subpart F.

The Agency understands that business and industry practices are intended to ensure that regulated substances sold or distributed meet commercial requirements. As described below, the Agency acknowledges concerns about potential burden and is making some changes from the proposal. EPA appreciates the benefits, where appropriate, of accommodating standard industry practices and providing flexibility for laboratories. However, as explained in the Framework Rule, testing and sampling requirements for regulated substances helps to ensure correct identification and labeling, which among other things, helps to ensure accurate quantities of allowance expenditures.

One commenter suggested EPA provide the opportunity to demonstrate that alternative analytical methods are equivalent to those specified (or incorporated by reference) in appendix A to 40 CFR part 82, subpart F, and EPA Method 18. In response to this comment, EPA is making adjustments to the requirements being finalized. Section 5.3 of appendix A to 40 CFR part 82, subpart F (which is based on AHRI 700–2016) identifies the test methods in the section as ''referee tests'' and states that, ''[i]f alternative test methods are employed, the user must be able to demonstrate that they produce results at least equivalent to the specified referee test method.'' In the proposal, as outlined in Table 3 of this preamble, EPA did not propose to include Section 5.3 of appendix A to 40 CFR part 82, subpart F. However, in response to the comments received, in the regulatory requirements finalized in this action the Agency points out that by including section 5 of appendix A to 40 CFR part 82, subpart F, alternative test methods may be used when the alternative test methods have been demonstrated to produce at least equivalent results to the referee test methods in appendix C to AHRI Standard 700–2014. The referee test for refrigerant identification is specified in section 5.3 of appendix A to 40 CFR part 82, subpart F as gas chromatography as described in 2008 appendix C to AHRI Standard 700–2014 (incorporated by reference, see 40 CFR 82.168(b)(2)). Appendix C to AHRI Standard 700–2014 contains several different gas chromatography methods, specialized for different refrigerant types. Section 7 of each method in appendix C to AHRI Standard 700–2014 (*i.e.,* for Parts 7 and 9) provides information concerning the sensitivity, precision, and accuracy of that test method. Therefore, to demonstrate that an alternate test method is equivalent, it is sufficient to demonstrate that the alternate test method can achieve the same sensitivity, precision, and accuracy as the referee test method.

A few commenters raised concerns about EPA's proposal to require use of EPA Method 18 for certain regulated substances not covered in the methodology in appendix A to 40 CFR part 82, subpart F. One commenter stated that EPA Method 18 applies to analysis of gaseous emissions and not to pure substances. Another commenter stated that EPA Method 18 is overly burdensome to regulated entities. Some commenters noted available alternatives. One commenter stated that methods for non-refrigerant regulated substances already exist in American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 34, have applicable methods in AHRI 700, or for any not listed in AHRI 700, ISO 9001 certification provides confirmation that sampling procedures, analytical methods, calibration procedures, manufacturing specifications and sales specifications are documented and followed. One commenter suggested that EPA allow use of ASTM standards for HFC–227ea, HFC–125, and HFC–236fa when offered for sale or distribution for fire suppression, specifically ASTM D6231, D6541, and D6064 (for HFC–125, HFC–236fa, and HFC–227ea, respectively), which incorporate ASTM D6806. The commenter stated that ASTM D6806 dictates gas chromatography calibration methods for accuracy, while the ASTM D6064 standard provides rigorous gas chromatography setting protocols in the body of the standard. The commenter stated these standards are important to the fire protection community and are used as industry references in varying contexts.

EPA acknowledges the comments and is making some changes from the proposal as described below. EPA appreciates the benefits, where appropriate, of accommodating standard industry practices and providing flexibility for laboratories. However, it is also important that the testing methods used to verify the composition of all bulk HFCs achieve a certain level of accuracy. As described below, EPA is codifying requirements through this rulemaking to ensure accurate testing and consistency throughout the HFC regulatory environment but is providing flexibility by only requiring either applicable portions of EPA Method 18 or ASTM D6806. EPA Method 18 provides for any gas chromatography method that separates all compounds and quantitates all peaks with 5 percent of the total peak area. ASTM D6806 provides a performance-based specification of gas chromatography analysis and is included in the fire suppression standards referenced in comments as a testing method to analyze purity. For the reasons described in this section, the Agency believes that these approaches are sufficiently general to not be burdensome to regulated entities and that EPA's modifications are responsive to the concerns raised in comments.

Appendix A to 40 CFR part 82, subpart F, 2008 Appendix C to AHRI Standard 700–2014, and ANSI/ASHRAE Standard 34 do not include specific testing methodologies for determining the quality of HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, and HFC–43–10mee. As a result, the Agency proposed the use of EPA Method 18 because it specifies analytical methods that are applicable to determining the composition of non-refrigerant HFCs, including quality control, calibration, and analytical procedures related to gas chromatography. EPA was not aware of other alternative testing methodologies that suitably address the necessary test procedures for HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, and HFC–43–10mee. EPA acknowledges that EPA Method 18 is designed to measure gaseous organics

emitted from an industrial source and includes provisions, particularly related to sampling, which are not directly related to the requirements under 40 CFR 84.5(i)(3). The EPA proposed to codify the requirement to use EPA Method 18 as a whole for the identified regulated substances, but in referring to the entirety of EPA Method 18, including the aforementioned provisions that are not directly related to the requirements under 40 CFR 84.5(i), the proposed form of the requirement could have posed unnecessary burden on laboratories performing testing of regulated substances. Accordingly, for the specified HFCs that are not listed in appendix A to 40 CFR part 82, subpart F, EPA has identified relevant portions of EPA Method 18 that are applicable to these HFCs, and the Agency is finalizing this narrower subset of relevant portions. As an alternative to these relevant portions of EPA Method 18, the Agency is also allowing the use of ASTM D6806 to analyze these HFCs and is incorporating ASTM D6806 by reference in 40 CFR 84.37. ASTM D6806 is a performance-based standard of gas chromotography methods that defines what is required for a user to demonstrate that a method to be used is valid. This standard allows flexibility for a laboratory to apply appropriate testing methods, such as industry standards which have recently been reviewed and validated, ensures that the testing meets standard practices, and broadly applies to non-refrigerant regulated substances that are not listed in appendix A to 40 CFR part 82, subpart F.

These changes from proposal also address in a consistent approach one commenter's request to allow the use of testing methods ASTM D6231, D6541, and D6064 for non-refrigerant HFCs used in fire suppression and EPA is incorporating these three standards by reference in 40 CFR 84.37. Relevant components of ASTM D6231 and D6541 are included in the finalized requirements because those standards reference and specify the use of ASTM D6806 as the test method to conduct the purity analysis. ASTM D6064 has also been demonstrated to be equivalent to the designated referee test method in appendix C to AHRI Standard 700–2014 and therefore can be used as an alternative test method for non-refrigerant HFCs prescribed requirements in appendix A to 40 CFR part 82, subpart F. Commenters also cite to ISO 9001. EPA notes that ISO 9001 is a quality management program that is not specific to laboratory testing, refrigerants, or HFCs, and has determined not to include the standard in the regulations being amended through this final rule.

One commenter asked that EPA exempt from the testing requirements fire protection equipment manufacturers that would qualify as repackagers and instead allow those entities to rely on a certificate of analysis to verify the composition of a container. The commenters described that fire equipment manufacturers that would qualify as repackagers purchase bulk regulated substances, transfer the bulk regulated substances into system cylinders or portable extinguishers which constitute final products, and then the bulk regulated substances are not transferred or removed until servicing or decommission. The commenter specifically requested that the repackager not be required to retest the substance before or after it has been transferred into a system cylinder or a portable fire extinguisher. The commenter also stated that fire suppressant recyclers should not have to retest bulk regulated substances after they have been transferred from an original, larger batch container into a system cylinder or portable extinguisher if the repackager has already tested a representative sample of the regulated substances within the batch container.

EPA understands the commenter to be requesting that fire protection equipment manufacturers that would qualify as repackagers be exempted from the requirements established in the Allocation Framework Rule at 40 CFR 84.5(i)(3)(i), which specifies that entities recycling for fire suppression or repackaging regulating substances (for any use) must test a representative sample of the recycled or repackaged regulated substances before they are initially sold or distributed. The commenter references a practice related to transferring regulated substances into system cylinders or portable extinguishers. With respect to portable extinguishers, EPA notes that under the definition of ''bulk'' in 40 CFR 84.3, a regulated substance contained in a fire extinguisher is not a bulk substance. As a result, fire extinguishers are not subject to any requirements under 40 CFR part 84, subpart A, including the sampling and testing requirements.

With respect to system cylinders, they are bulk regulated substances and are therefore subject to requirements in 40 CFR part 84, subpart A. Under the requirements being finalized in this rule, testing of regulated substances is required any time a qualifying action, such as repackaging, is performed on the regulated substances. Given the importance of verifying the label matches the contents of a container of HFCs, the Agency does not see a basis to allow fire protection equipment manufacturers that would qualify as repackagers to rely on a certificate of analysis instead of performing sampling and testing to verify the composition of the larger batch container like all other repackagers. Retesting individual cylinders is not required once they have been initially sold. The Agency's definition of representative sample as described and finalized below in section VII.C of this preamble allows for testing of the original, larger batch container if the composition of the original batch container is the same as the intended composition of the smaller bulk container. In other words, an entity could retain a recycled batch of regulated substances in a larger container, test a representative sample of the bulk regulated substances within that larger container, transfer bulk regulated substances from the larger container to a population of smaller containers, and apply those test results to verify the composition of the smaller containers. Similarly, this approach would also be appropriate when repackaging HFCs from one original, larger batch container to smaller bulk containers (*e.g.,* system cylinders), so long as the composition of the original, larger container is intended to match the smaller containers. EPA stresses that under this definition of the representative sample, the repackager retains the burden to ensure that the test represents the composition in the population of containers but allows for process controls or other quality control techniques to make this demonstration.

EPA sought comment on whether to extend the testing and sampling requirement in 40 CFR 84.5(i)(3) to exporters (or exporters that request additional consumption allowances under 40 CFR 84.19) to verify the regulated substances being exported match the label and, where relevant, the request for additional consumption allowances. One commenter responded without specific information that existing requirements along with auditing requirements should be sufficient to confirm regulated substances being exported match the container label. The Agency disagrees. Exported regulated substances may include inventory introduced prior to the establishment of requirements under 40 CFR part 84 and available information may not be able to confirm the composition of such exported regulated substances. Regardless of whether the exported regulated

substances were produced prior to 2022, sampling and testing requirements for exported HFCs helps ensure EPA is collecting accurate information to gauge U.S. consumption relative to the annual limit prescribed in the AIM Act. Sampling and testing is also important for RACAs, where EPA relies on submitted documentation to evaluate the verified quantity of regulated substances exported and issues consumption allowances equivalent to the quantity of regulated substances that were exported. EPA is concerned about the possibility of fraud if there are not adequate safeguards in place, such as a requirement to confirm the quantity of regulated substance(s) in the container(s) matches the label and documentation being submitted to EPA and CBP. The Agency also notes that auditing requirements under 40 CFR 84.33 do not provide a means to ensure the accurate identification of regulated substances documented as exported. Accordingly, EPA is extending the testing and sampling requirements to regulated substances that are exported. The Agency does not expect this requirement to add significant additional burden, since the destination for each container of regulated substances may not be known at the time the container is filled and producers, importers, and all other repackagers and cylinder fillers would follow one sampling and testing methodology for each HFC or HFC blend regardless of whether this requirement was extended to exports.

EPA also sought comment on whether to extend the testing and sampling requirements to additional entities, including others that sell or distribute regulated substances, or that offer them for sale and distribution as well as those that transform, use as a process agent, destroy, or receive application-specific allowances in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act to further ensure the label matches the regulated substance in containers and aid in the detection of off-specification and potentially non-compliant containers of regulated substances. Two commenters stated that it was not necessary to extend the testing and sampling to additional entities that receive application-specific allowances in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act, due to existing industry and regulatory practices that already require high purity standards. One commenter stated that the proposed sampling and testing requirements may in fact contribute to contamination of these high purity materials. Another commenter stated that its industry sector is already subject to rigorous sampling, testing, and data requirements under existing Federal regulations. The Agency appreciates the commenters' input and is not extending the current testing and sampling requirements to the additional entities listed. EPA notes that the testing and sampling requirements under 40 CFR part 84, subpart A apply to the entity initially performing the relevant action. As an example, an entity that produces regulated substances for use in metered dose inhalers must first test a representative sample of the regulated substances prior to sale or distribution. Other entities *(e.g.,* metered dose inhaler manufacturers) may then purchase the regulated substances without having to conduct further testing. The recipient entity is only required to conduct additional testing if a qualifying action such as repackaging is performed on the regulated substances.

For the reasons described previously, EPA is finalizing revisions to 40 CFR 84.5(i)(3)(i) to add requirements to use the testing methodology prescribed in appendix A to 40 CFR part 82, subpart F for regulated substances offered for sale and distribution as refrigerants and the sampling and testing methods in Table 4 of this preamble for regulated substances offered for non-refrigerant uses. The Agency is also extending the requirements in 40 CFR 84.5(i)(3)(i) to regulated substances that are exported. Once these revisions go into effect, regulated entities will be required to use the sampling and testing methods applicable to the list of target analytes provided at each method. Since appendix C to AHRI Standard 700–2014 (incorporated by reference in § 84.37) does not include specific test procedures for determining the quality of regulated substances that are not used as refrigerants, EPA is also requiring the use of either sections 8 through 13 of EPA Method 18 as applicable or ASTM D6806 (incorporated by reference in § 84.37 for HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, HFC–43–10mee, isomers of listed regulated substances, and blends of regulated substances not used as a refrigerant. EPA Method 18, ''Measurement of gaseous organic compound emissions by gas chromatography,'' can be found at appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

TABLE 4—FINALIZED NON-REFRIGERANT REGULATED SUBSTANCE SAMPLING AND TESTING METHODS

Regulated substance	Sampling and testing method
HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a	Appendix A to 40 CFR part 82, subpart F, Sections 1, 2, 3, 5.1, 5.2, 5.3, 7, 8; *Part 7 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014—Normative* (incorporated by reference in § 84.37).[3]
HFC–134a, HFC–143, HFC–245fa, HFC–32, HFC–152	Appendix A to 40 CFR part 82, subpart F, Sections 1, 2, 3, 5.1, 5.2, 5.3, 7, 8; *Part 9 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014—Normative* (incorporated by reference in § 84.37).[3]
HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–43–10mee.	Sections 8,[1] 9, 10, 11, 12,[2] and 13 of EPA Method 18 as applicable—appendix A–6 to 40 CFR part 60—Test Methods 16 through 18. Or ASTM D6806–02 (2022), *Standard Practice for Analysis of Halogenated Organic Solvents and Their Admixtures by Gas Chromatography (incorporated by reference in § 84.37).*[4]

[1] Only applicable portions of section 8 as specified here are required. Canisters may be used in place of bags for the purposes of these requirements. A sampling and analysis procedure under section 8.2 which provides for a representative sample is required (while section 8.2.1.5 is likely most appropriate, other procedures may be acceptable). Sections 8.4.1, 8.4.2.1, and 8.4.2.2 are required.

[2] ''Dry basis'' concentrations do not need to be recorded.

[3] ASTM D6064–11 (reapproved 2022), Standard Specification for HFC–227ea, 1,1,1,2,3,3,3-Heptafluoropropane (CF3CHFCF3) (incorporated by reference in § 84.37) may be used as an alternative for non-refrigerant regulated substances offered for fire suppression use.

[4] ASTM D6231/D6231M–21, *Standard Specification for HFC–125 (Pentafluoroethane, C2HF5)* (incorporated by reference in § 84.37) and ASTM D6541–21 *Standard Specification for HFC–236fa, 1,1,1,3,3,3-Hexafluoropropane, (CF3CH2CF3),* (incorporated by reference in § 84.37) reference ASTM D6806 and may be used as an alternative for non-refrigerant regulated substances offered for fire suppression use.

ii. Specifications

In the sampling and testing section of the proposal, EPA proposed to clarify that the existing requirement at 40 CFR 84.5(i)(3)(ii), that no person may sell or distribute, or offer for sale or distribution, regulated substances as a refrigerant that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants, is applicable for a single component substance, *i.e.,* neat substance, or a multicomponent substance, *i.e.,* a blend or mixture containing one or more regulated substances. EPA received no comments on this aspect of the proposal, and is finalizing the clarification as proposed.

EPA also proposed to add a requirement under 40 CFR 84.5(i)(3)(ii) that entities producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances must verify the applicable refrigerant specifications using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F. One commenter supported the proposed sampling and testing requirements. One commenter stated that not all HFC sales specifications conform exactly with AHRI 700 (*e.g.,* SAE J2776 specifications for automotive HFC–134a allow a higher moisture level than AHRI 700). The commenter was incorrect in its statement that the allowed moisture contents vary between SAE J2776 and AHRI 700. The moisture limit in SAE J2776 references the AHRI 700 requirements, and both, along with the existing requirements in appendix A to 40 CFR part 82, subpart F, set the moisture limit as 10 ppm by weight. EPA also understands that HFC–134a which meets the specifications in Table 1A of appendix A to 40 CFR part 82, subpart F would be suitable for automotive use. However, the Agency acknowledges potential challenges for regulated substances recycled in accordance with 40 CFR part 82, subpart B for use as a refrigerant in motor vehicle air conditioning (MVAC) and MVAC-like appliances to meet the requirements in appendix A to 40 CFR part 82, subpart F. Under a change being finalized at 40 CFR 84.5(i)(3)(ii), the act of recycling would not require an entity to verify that the recycled MVAC refrigerants meet the specifications in appendix A to 40 CFR part 82, subpart F.

When recycling of regulated substances occurs for use in MVAC and MVAC-like appliances, the refrigerant is typically recovered using a recycling machine from MVAC/MVAC-like appliances (*e.g.,* to remove some impurities) and transferred to a holding container. It is then either recharged into the same equipment it was recovered from as part of the same servicing event or held in that container until it is used to recharge other MVAC/MVAC-like appliances. Generally speaking, the regulated substance is not being transferred between containers and/or service shops, and the refrigerant is not being distributed or sold further in a container. There is not a label that would need to be verified and the recycled HFC is not being repackaged. Requiring this refrigerant to meet a higher standard than already required by existing EPA regulations and testing to confirm regulated HFC refrigerants meet a higher specification standard in these instances prior to sales is unnecessary for purposes of 40 CFR 84.5(i)(3)(ii) and would be contrary to standard industry practices. Accordingly, and consistent with longstanding requirements under 40 CFR part 82, EPA is excepting regulated substances used as refrigerants in MVAC and MVAC-like appliances from the general prohibition in 40 CFR 84.5(i)(3)(ii), so long as the regulated substance(s) was used only in an MVAC or MVAC-like appliance, is to be used only in MVAC or MVAC-like appliances, and is recycled in accordance with 40 CFR part 82, subpart B. Accordingly, regulated substances recycled solely for use in MVAC and MVAC-like appliances may be sold, distributed, or offered for sale or distribution without meeting the full specifications in appendix A to 40 CFR part 82, subpart F.

As discussed above in this section, EPA reiterates that the testing and sampling requirements under 40 CFR part 84, subpart A apply to the entity initially performing the relevant action. As an example, testing and sampling are required prior to the first sale or distribution of regulated substance in a newly filled or imported container. Testing is not required for future points of sale or distribution if regulated substances are not further processed or transferred between containers.

EPA sought comment on whether to establish purity and other specifications for non-refrigerants similar to those found in appendix A to 40 CFR part 82, subpart F or if the proposed approach of requiring the label to match the nominal composition of regulated substance(s) in the container is sufficient to ensure purchasers know the contents of the container and that all entities can verify the number of allowances that needed to be expended when the regulated substances in the container were imported or produced. The Agency did not receive comment on this issue and is not finalizing purity and other specifications for non-refrigerant regulated substances at this time. For illustrative purposes, EPA is noting the specifications for regulated substances in Table 5.

TABLE 5—REGULATED SUBSTANCE SPECIFICATIONS

Regulated substance	Specifications
HFC–23, HFC–32, HFC–125, HFC–134a, HFC–143a, HFC–152a, HFC–227ea, HFC–236fa, HFC–245fa.	Refrigerant use: All in Table 1A of appendix A to 40 CFR part 82, subpart F. Non-refrigerant use: Testing results match nominal composition on label.
HFC–41, HFC–134, HFC–143, HFC–152, HFC–236cb, HFC–236ea, HFC–245ca, HFC–365mfc, HFC–43–10mee.	Refrigerant use: All in appendix A1 to 40 CFR part 82, subpart F. Non-refrigerant use: Testing results match nominal composition on label.

Collectively, the changes ensure that defined procedures are used to perform testing on representative samples of single component HFCs or multicomponent HFC blends by all entities that produce, import, reclaim, recycle for fire suppression, or repackage HFCs. Regulated substances used as refrigerants, with limited exception, must conform to the specifications provided in appendix A to 40 CFR part 82, subpart F, or, if not listed therein, the Generic Maximum Contaminant Levels in appendix A1 to 40 CFR part 82, subpart F. EPA is not establishing specification requirements for regulated substances that are not used as refrigerants. However, the

changes require that samples of both single component HFCs and multicomponent HFC blends for any use shall be quantitatively analyzed for each component expected based on the container label, air and other non-condensables, impurities (both volatile impurities and halogenated unsaturated volatile impurities), and high boiling residue. Among other purposes, compliance with these requirements ensures the label matches what is in the container.

B. Recordkeeping of Tests

EPA proposed to modify the existing recordkeeping requirements in 40 CFR 84.31 to specify that the types of records required to be maintained related to testing results include instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

One commenter expressed support for the modified recordkeeping requirements. Another requested that the requirements follow best practices and avoid unnecessary duplication of other requirements. One other commenter requested EPA consider whether these requirements would be overburdensome and unnecessary. Commenters also asked for clarification on which instrument calibration records were intended to be maintained and what qualifies a form as suitable for review. EPA responds that these recordkeeping requirements may be necessary to support enforcement efforts under the HFC Phasedown program if EPA identifies an off-specification or mislabeled container of regulated substances and needs to confirm proper testing was conducted to verify the contents of the container(s). The commenter did not identify any alternative best practices, duplication, or particular undue recordkeeping burden associated with the proposed recordkeeping requirements. The Agency is unaware of such concerns as well and sees value in requiring the documentation to be maintained. These records support the integrity of this testing regime by enabling EPA to assess on inspection records, which document and validate test results. In response to requests for clarification, EPA clarifies that instrument calibration documentation must include records in accordance with the required sampling and testing methodologies such that an outside observer can reasonably assess whether the correct methodology was followed and to verify test results. As one example, ISO 17025 requires that retained records include calibration dates, results of calibrations, adjustments, acceptance criteria, and the due date of the next calibration or the calibration interval. A suitable form consists of dated paper or electronic documentation organized to clearly associate test results with the tested regulated substances and containing all related and applicable calibration, quality control, and audit trail [38] documentation for given test methods and results. In reviewing comments received and the Agency's proposal, EPA has determined that these dated records, including audit trail documentation of any modifications to records, are critical to ensure data integrity and allow outside observers to verify the validity of testing methodologies and results. Under standard practice entities may revise initial records after an error has been discovered. Such modifications could also reflect intentional efforts to conduct fraud. Audit trail documentation provides a transparent way to identify and assess such changes. The Agency understands that there are existing options in the data collection software that would present minimal increased burden and can be turned on to track changes to the various files associated with the analysis performed on the instrument. As a result, EPA is adding audit trail files as a component of the recordkeeping requirements, as well as finalizing the remaining recordkeeping requirements as proposed.

EPA proposed to extend the general recordkeeping requirement for test records to include recyclers for fire suppression and repackagers since the existing requirement in 40 CFR 84.5(i)(3)(i) requires fire suppressant recyclers and repackagers to test a representative sample of regulated substances before they are sold. The Agency did not receive comment on the proposal. Consistent with the request for comment on whether to extend the testing and sampling requirements, EPA also sought comment on whether to extend these requirements to other entities, such as by establishing recordkeeping requirements in 40 CFR 84.31(d) for exporters. As described above in section VII.A of this action, the Agency is extending the testing and sampling requirements to regulated substances that are exported. EPA did not receive comment on the issue of whether to extend related recordkeeping requirements to other entities. The Agency considers it appropriate that all entities subject to the sampling and testing provisions in 40 CFR part 84, subpart A must maintain associated records. Accordingly, in this action, EPA is finalizing its proposal to extend the recordkeeping requirement for test records from producers, importers, and reclaimers to include recyclers for fire suppression and repackagers. The Agency is also establishing test records recordkeeping requirements for exporters. Specifically, EPA is adding recordkeeping provisions at, respectively, 40 CFR 84.31(j)(3)(ii) and 84.31(k)(1), and 40 CFR 84.31(d) requiring that recyclers for fire suppression, repackagers, and exporters maintain dated records of batch tests of regulated substances packaged for sale, distribution, or export, including information on instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

Associated with this proposal to extend the general recordkeeping requirement for test records to include recyclers for fire suppression and repackagers, the Agency also provided interpretations on how it understood the terms ''fire suppressant recyclers'' [39] and ''repackagers'',[40] requested comment on whether existing interpretations and guidance provide sufficient clarity, and requested comment on whether to codify these interpretations in regulatory definitions. One commenter suggested the Agency codify a definition of ''fire suppressant recycler'' with two significant modifications. The first modification was to remove the reference to purity

[38] Secure, computer-generated, time-stamped audit trails are used to independently record the date and time of operator entries and actions that create, modify, or delete electronic records.

[39] EPA presented the following interpretation at proposal: Generally, an entity that collects used HFC fire suppressants and directly resells those recovered HFCs—with or without any additional reprocessing including testing for purity—to another person for reuse as a fire suppressant would qualify as a fire suppressant recycler (also referred to as a ''recycler for fire suppression'' in 40 CFR part 84, subpart A). A person that recovers and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. Reselling HFC fire suppressants that have already been recovered and subsequently reprocessed by another person would not be a fire suppressant recycler. In effect, a fire suppressant recycler is the first entity to reintroduce recovered HFC fire suppressants into the market use as fire suppressant. 87 FR 66394, n.48.

[40] The Agency presented the following interpretation at proposal: EPA views repackagers and cylinder fillers interchangeably under the regulations at 40 CFR part 84, subpart A, and would define repackagers as entities who transfer regulated substances, either alone or in a mixture, from one container to another container prior to sale or distribution or offer for sale or distribution. 87 FR 66394, n.49.

testing, as existing NFPA standards require that the agent be tested for purity before it is reused as a fire suppressant. The commenter stated that EPA's language may imply that testing was optional under NFPA standards. The second modification was the removal of the last sentence, as commenters believed the phrase ''market use'' added confusion to the definition. The Agency understands that the references to purity testing and market use are unnecessary to explain which actions and entities are included within the definition. Including other edits for clarity, EPA accordingly is codifying the following definition of ''fire suppressant recycler'': ''Generally, an entity that collects used HFC fire suppressants and directly resells those collected and aggregated HFCs—with or without any additional reprocessing—to another entity for reuse as a fire suppressant (also referred to as a ''recycler for fire suppression'' in this subpart). An entity that collects and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. An entity that resells HFC fire suppressants that have already been reprocessed for use as a fire suppressant by another entity would not be a fire suppressant recycler.''

The Agency did not receive comment on whether to codify a definition of ''repackagers'' and in this action is codifying the definition of ''repackagers'' to mean ''entities who transfer regulated substances, either alone or in a blend, from one container to another container prior to sale or distribution or offer for sale or distribution.'' Establishing a defined term in 40 CFR 84.3 will improve clarity and support compliance with the sampling and testing requirements for repackagers being finalized in this rule. This is particularly relevant and helpful given the comments received on this rule from fire suppressant recyclers.

A commenter also expressed concern regarding how these definitions may be applied to the fire suppression industry. The commenter stated that fire equipment distributors that service equipment directly and through cylinders exchanges should not be considered fire suppressant recyclers. Servicing may consist of transferring the HFCs from the equipment and transferring the HFCs directly back into the same equipment, or through a cylinder exchange where customers return their equipment and receive different previously serviced equipment. EPA understands that direct servicing entails periodically removing bulk regulated substances from the system cylinder and transferring it to a holding tank in order to perform a hydrostatic test to evaluate the cylinder's integrity. The bulk regulated substances are not recycled or otherwise processed and are then returned to the same system cylinder for continued use in the same application. In other words, it is the system cylinder that is receiving the servicing and not the regulated substance. As described in this section above, this direct servicing of a system cylinder is not intended to result in resale or redistribution of regulated substances because the same regulated substances are returned to the same original customer. The key distinguishing feature for why this activity does not fall under the definition of a fire suppressant recycler is the fact that the regulated substance is not being resold to another entity but is being returned to the original owner. The Agency notes that a cylinder exchange, where regulated substances and/or system cylinders are recovered from one entity's equipment and sold or distributed to another entity would fall under the definition of ''fire suppressant recycler,'' unless the company recovering the cylinder is sending the regulated fire suppressant to another entity that will do the recycling and repackaging before the regulated substance is sold for use in fire suppression equipment.

The same commenter expressed concern that EPA's interpretation of repackagers may include fire equipment distributors which return serviced equipment to customers. EPA agrees that fire equipment distributors could be repackagers under this definition, especially if they remove regulated substances from one system cylinder and fill a different cylinder with those regulated substances. The Agency understands that the primary concern identified in the comment is that some fire equipment distributors, who service a limited number of system cylinders in a year, may be subject to the rule and that this would be a significant burden on those entities given they are generally returning the regulated substance to the same system cylinder it was recovered from. Given the intent is to allow for servicing of the cylinder, not the regulated substance, under this final rule EPA is explicitly exempting from the definition of repackager a fire equipment distributor (or other related entity) only servicing system cylinders for fire suppression equipment—that is returning the regulated fire suppressant to the same system cylinder it was recovered from after the system cylinder is serviced.

In combination, under this final rule, entities servicing system cylinders for fire suppression equipment are not a fire suppressant recycler or a repackager if they return the same regulated substances to the same original customer in the same system cylinder it was recovered from after the system cylinder is serviced. Further, if you are returning the same regulated substances to the same system cylinder it was recovered from after the system cylinder is serviced, you are not a repackager. In response to comments on cylinder exchanges, if cylinders are exchanged and never opened, that would not be considered repackaging, but could be categorized as fire suppressant recycling if the regulated substance is collected from one entity and then distributed to another entity. This activity would fall under the definition being finalized in this rule and would be covered by other provisions in this rule (*e.g.,* the container tracking requirements previously finalized in 40 CFR 84.23).

C. Define ''Batch'' and ''Representative Sample'' and Clarify the Relationship Between These Terms

The Allocation Framework Rule established that reclaimers, producers, and importers are required to maintain records of the results of ''batch'' tests of regulated substances and EPA is extending requirements to maintain dated records of batch tests for fire suppressant recyclers, reclaimers, and exporters in this rule.

Testing requirements codified at 40 CFR 84.5(i)(3)(i) in the Framework Rule require testing of a ''representative sample.'' Preceding subsections of this preamble outline revisions EPA is making to 40 CFR part 84, subpart A with respect to sampling and testing requirements.

EPA proposed to add a definition of ''batch'' to 40 CFR 84.3 and did not receive comment on this issue. In this action the Agency is adding to this proposed definition the phrase ''with the same nominal composition'' to clarify that a batch is associated with a larger population (*e.g.,* a common set of mixing tanks or other larger container that the population of cylinders was filled from) for the purposes of sampling and testing required by this rule. For example, a batch of R–410A cylinders could be the cylinders that were filled after blending two or more larger ISO tanks of HFC–125 and HFC–32. The revised definition is that ''batch'' means a vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers HFCs

directly for sale or distribution, or for repackaging for sale or distribution; or a population of small vessels, containers, or cylinders with the same nominal composition that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution. EPA is finalizing this definition of ''batch'' for the reasons explained later in this section.

EPA also proposed a two-part definition of representative sample. The first part defines a representative sample of a container for sale as a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of HFC(s) in an unbiased and precise manner. For the second part, EPA defines a representative sample of a batch as a sample that can be used to infer that the composition of HFC(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch are within stated tolerances (*e.g.,* within the specifications established in the tables in section 6 of appendix A to 40 CFR part 82, subpart F, such as composition and percent by volume air and other non-condensables). Sampling and testing methods established in 40 CFR 84.5(i)(3) provide procedures and metrics to conduct sampling of the regulated substance within a container and testing to determine whether the batch meets stated tolerances. Recordkeeping requirements for sampling and testing in general and batch testing in particular provide documentation that allows EPA to assess the validity of sampling and testing and any inferences based on use of representative samples. EPA did not receive comment on this issue and is finalizing the definition of ''representative sample'' as proposed for the reasons explained later in this section.

EPA is making these changes to allow for the common scenario when testing of a batch is used to satisfy the requirement for ''testing of a representative sample'' to verify that the composition of HFCs in containers matches the container labeling, while also requiring that these batch test results produce valid labels for individual containers. The definition of ''representative sample'' creates consistency between sampling and testing regulations in 40 CFR part 84, subpart A and the implied notion of a representative sample in appendix A to 40 CFR part 82, subpart F where specific methods for sampling containers are outlined. The definitions of ''batch'' and ''representative sample'' in combination ensure that testing of one portion of a batch produces test results that are characteristic of the population of cylinders which may be filled from that batch. These changes will help clarify the recordkeeping requirements associated with maintaining records of ''batch tests.''

D. Laboratory Methods and Accreditation

The existing regulations at 40 CFR 84.5(i)(2)(ii)[41] provide an option to importers that want to repackage regulated substances that were initially either unlabeled or mislabeled to ''[v]erify the contents with independent laboratory testing results and affix a correct label on the container that matches the test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.'' The regulations codified in the Framework Rule did not provide any detail on what would be required to ensure independence nor on the quality of the analysis that would be required of ''laboratory testing.'' To implement this provision fully, EPA proposed to define ''laboratory testing'' as the use of the sampling and testing methodology[42] prescribed in 40 CFR 84.5(i)(3) by a laboratory that is accredited to ISO 17025.[43] This phrase ''laboratory testing'' is not currently used anywhere else in 40 CFR part 84, subpart A, so the first part of the proposal was only intended to apply to situations where a cylinder is unlabeled or mislabeled and the importer is correcting that label before the date of importation (consistent with the definition at 19 CFR 101.1). This was intended to make clear that laboratory testing requires, for purposes of 40 CFR part 84, subpart A, the use of a consistent methodology and specified testing methods. EPA proposed to require that laboratories must be accredited to be used for purposes of meeting the 40 CFR 84.5(i)(2)(ii) requirements to repackage initially unlabeled or mislabeled regulated substances. This was intended to make clear that laboratory testing requires, for purposes of 40 CFR part 84, subpart A, the use of a consistent methodology and specified testing methods. The Agency sought additional comment on whether the AHRI Certified Refrigerant Testing Laboratory program and others should be allowed in addition to ISO 17025 laboratories.

The Agency also sought comment on whether to require that all testing under 40 CFR 84.5(i)(3) be conducted by an independent and/or accredited laboratory. The Agency sought further comment on whether other safeguards are in place at laboratories that are currently typically used by this regulated community that are similar in nature to accreditation, such as certification by an independent third party, that would decrease the importance of testing being conducted by an independent and/or accredited laboratory. In effect, EPA was seeking comment on whether to use the phrase ''independent laboratory testing'' or ''laboratory testing'' in 40 CFR 84.5(i)(3) in addition to 84.5(i)(2)(ii).

EPA did not receive comment on its proposal to specifically require laboratories be accredited to meet the requirements under 40 CFR 84.5(i)(2)(ii) to repackage initially unlabeled or mislabeled regulated substances. Commenters strongly opposed requiring all testing under 40 CFR 84.5(i)(3) be conducted by an independent and/or accredited laboratory. Commenters stated that the requirement would be burdensome, redundant, and may interfere with internal quality control and operations. As noted in section VII.A of this preamble, two commenters also stated that existing industry and regulatory practices require high purity standards and one commenter noted that existing Federal regulations for its industry sector also have rigorous sampling, testing, and data requirements.

If EPA were to require accreditation or certification, commenters generally opposed potential requirements that laboratories conducting testing must be accredited to ISO 17025 and instead suggested a variety of alternatives. One commenter suggested EPA consider flexibility in implementing testing laboratory accreditation or certification provisions, including specifically

[41] This reference was incorrectly listed as 40 CFR 82.5(i)(2)(ii) in this rulemaking's proposal at 87 FR 66395. But it was clear contextually that EPA was referring to repackaging provisions in 40 CFR 84.5(i)(2)(ii), as stated in the proposed regulatory text at 87 FR 66405.

[42] The proposed regulatory text cited the sampling and testing methodology prescribed in 40 CFR 84.5(i)(c). That reference was a clear typographical error. The sampling and testing methodology is prescribed in 40 CFR 84.5(i)(3), as discussed in section VII.A of the proposal at 87 FR 66392–66394 and the proposed regulatory text at 87 FR 66405–66406.

[43] In November 2017, ISO/International Electrotechnical Commission (IEC) published a new version of the test laboratory accreditation standard, ISO/IEC 17025:2017. In addition to adding a definition of ''laboratory,'' the new version replaces certain prescriptive requirements with performance-based requirements and allows for greater flexibility in satisfying the standard's requirements for processes, procedures, documented information, and organizational responsibilities. ISO/IEC 17025:2017 is the version EPA proposed and is finalizing to incorporate by reference. Interested persons may purchase a copy of ISO/IEC 17025:2017 from the source provided in 40 CFR 84.37(b)(1), and it is available at *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.*

allowing use of in-house laboratories when they meet similar quality safeguards as ISO 17025 certification. Two commenters stated that their facilities and associated laboratories were already certified to ISO 9001 and further requirements were unnecessary. One commenter stated a preference for AHRI standards because AHRI standards are specific to HFCs. Multiple commenters variously recommended that acceptable certifications include AHRI Certified Refrigerant Testing Laboratories, ISO 9001, or those in compliance as described in EPA's Quality Program-Related Regulations, which include overarching quality management system standards such as ISO 9001 and ISO/TS 16949. Commenters stated that these certifications are suitable to ensure testing and sampling goals, better align with existing industry practices, and would be less burdensome to industry.

EPA acknowledges the support for allowing the use of all laboratories, including in-house laboratories, that meet suitable quality standards, and is not finalizing a requirement that all laboratory testing under 40 CFR 84.5(i)(3) be done by independent laboratories. However, the Agency is finalizing a requirement that laboratory testing under 40 CFR 84.5(i)(3) be done by an accredited or certified laboratory. EPA places weight on the fact that laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration, and maintenance of the testing environment; sampling, handling, and transportation of test items; and quality assurance of test and calibration data. Accreditation ensures that laboratories follow good laboratory practices and that their operations have been reviewed by a recognized accreditation authority. The Agency notes that ISO 9001 and EPA's Quality-Program Regulated Regulations are quality-management programs that are not specific to laboratory testing or HFCs. EPA acknowledges commenters' support for allowing AHRI Certified Laboratory Program certification in addition to ISO 17025 accreditation. The AHRI certification program is less rigorous than ISO 17025, but does address HFCs and refrigerants and is commonly used by entities regulated by this rule. On review of other safeguards in place at laboratories that are currently typically used by this regulated community that are similar in nature to accreditation, such as certification by an independent third party, the Agency also identified the Occupational Safety and Health Administration's (OSHA) Nationally Recognized Testing Laboratory program under 29 CFR 1910.7 as a suitable alternative certification program that is well-established and ensures laboratories follow good laboratory practices. OSHA recognizes laboratories as meeting the requirements in 29 CFR 1910.7 to perform testing and certification of products using consensus based test standards. These requirements are: the capability to test and evaluate equipment for conformance with appropriate test standards; adequate controls for the identification of certified products, conducting follow-up inspections of actual production; complete independence from users (*i.e.,* employers subject to the tested equipment requirements) and from any manufacturers or vendors of the certified products; and effective procedures for producing its findings and for handling complaints and disputes. OSHA regularly inspects and audits these laboratories to verify that they sustain the quality of their operations and continue to meet the requirements for recognition.

As discussed at proposal, EPA has determined that additional stringency is justified with respect to the 40 CFR 84.5(i)(2)(ii) since the regulatory revisions apply to unlabeled or mislabeled container(s). Under 40 CFR 84.5(i)(2)(ii), as revised under section VIII.B of this preamble, the importer of record is required in cases of repackaging unlabeled or mislabeled containers to verify the results with independent laboratory testing. In addition to the general requirements established in this rulemaking that sampling and testing must be conducted by accredited or certified laboratories that use the methodologies prescribed in 40 CFR 84.5(i)(3), EPA is maintaining the existing requirement that these laboratories verifying results under 40 CFR 84.5(i)(2)(ii) must be independent. As noted previously, the Agency acknowledges commenters' concerns regarding a broader independent laboratory testing requirement and is not finalizing a requirement under 40 CFR 84.5(i)(3) that all laboratory testing be conducted by an independent laboratory.

One commenter noted that it may take time to acquire appropriate certification and/or accreditation. To ensure sufficient time for entities to comply, EPA is delaying the effective date of the requirement for laboratories to attain accreditation or certification under one of the three options until October 1, 2024.

After considering comments received, the Agency is finalizing the requirement that ''laboratory testing'' means the use of the sampling and testing methodology prescribed in 40 CFR 84.5(i)(3) by a laboratory that is accredited to ISO 17025 in accordance with ISO/IEC 17025:2017(E) (incorporated by reference in § 84.37) or certified under the AHRI Refrigerant Testing Laboratory Certification Program in accordance with the AHRI Refrigerant Testing Laboratory Certification Program Operations Manual and the AHRI General Operations Manual (both incorporated by reference, see § 84.37) or recognized under OSHA's Nationally Recognized Testing Laboratory program in accordance with requirements codified at 29 CFR 1910.7. EPA is also adding the term ''laboratory testing'' to sampling and testing requirements in 40 CFR 84.5(i)(3)(i) and 40 CFR 84.5(i)(3)(ii). Along with the existing independent laboratory testing requirements in 40 CFR 84.5(i)(2)(ii), the codified definition of ''laboratory testing'' in 40 CFR 84.3 applies to these three instances in 40 CFR 84.5(i).

E. Certificate of Analysis for Imports of Regulated Substances

To aid in the review and monitoring of imports of HFCs, EPA proposed requiring that certificates of analysis records accompany all imports of regulated substances. A certificate of analysis provides a record that the applicable sampling and testing methodology has been used to verify the composition. Under the proposal, certificates of analysis would include documentation of the sampling and testing that is used to verify the composition of bulk regulated substance(s) offered for sale or distribution.

One commenter supported the proposed requirement that certificates of analysis accompany all imports, but suggested that this be electronically connected to the shipment, such as through an ACE document submission, instead of physically accompanying the shipment. Several commenters agreed that certificates of analysis are typically provided to the importer along with other documents required to facilitate the import, but opposed the proposed requirement that certificates of analysis physically accompany imports due to concerns about how practical it would be to hold the certificate on the imported container and the fact that containers will be out of the importer's custody during transit.

EPA understands that importers are typically in possession of certificates of analysis and did not expect the proposed requirement to change current practices. The Agency appreciates that there may be situations where the certificate of analysis is not available physically with the shipment, but sees a value in ensuring ready access to documentation available for inspection to verify the identity, composition, and necessary allowance expenditure for the import of regulated substances. In light of the comments received, the Agency agrees that the identified goals can be achieved either by the certificate of analysis physically accompanying the import or by having the documentation electronically connected to the shipment.

Several commenters also stated, without supporting information, that it is not practical to require certificates of analyses for the import of heels. EPA understands that business practices may not entail retesting residual amounts of regulated substances remaining in containers after most of the regulated substances have been transferred out of the container or otherwise used and prior to import of the cylinder with its remaining heel content, and that the heel may reasonably be expected to be tested at further transfer or processing steps. However, the Agency sees benefits in verifying the composition of all regulated substances imported, particularly in the case of heels where EPA has particular concerns about potential for illegal or misrepresented imports. As discussed in the Framework Rule, (86 FR 55178–55179) a goal of these labeling and testing requirements is to deter illegal activity and promote accurate and clear labeling, while also simplifying the process for EPA, in coordination with CBP for imports, to deduct a sufficient number of allowances at the point of import. This also reduces the safety risk of shipping and storing unlabeled cylinders and the potential to damage equipment resulting in the release of refrigerant and harm to the environment. Requiring limited labeling and testing requirements to verify material produced, imported, and sold matches the label supports EPA's efforts to confirm the contents of the container and thereby maintain the integrity of Allowance Allocation program by assuring the appropriate number of allowances are deducted for production and consumption of HFCs. In response to the commenters' concerns, the Agency notes that a certificate of analysis which certifies the content of regulated substances used to fill the container is acceptable to document the composition of the remaining heel content if there is a reasonable expectation that the information in the certificate of analysis is still valid and applicable to the container's heel. A certificate of analysis is effective whether the regulated substances originated in the United States or internationally, but regardless must meet the requirements specified at 40 CFR 84.3 ''Certificate of Analysis.'' Commenters did not provide any specific reasons why this requirement would be incompatible with business practices. For the reasons described above in this paragraph, EPA is not excepting imports of heels from the general requirement to include a certificate of analysis.

EPA also took comment on whether to require that the sampling and testing conducted prior to import that provides the associated certificate of analysis must be conducted by a laboratory accredited under ISO 17025. One commenter stated that the requirement that the certificate of analysis be provided by a laboratory accredited under ISO 17025 would be particularly burdensome and was unnecessary due to existing auditing and verification requirements.

Considering commenter input, EPA established requirements (as discussed in section VII.D of this preamble) that sampling and testing under 40 CFR 84.5(i)(2) and 40 CFR 84.5(i)(3) must be conducted by laboratories accredited to ISO/IEC 17025:2017(E), certified under the AHRI Refrigerant Testing Laboratory Certification Program, or recognized by OSHA's Nationally Recognized Testing Laboratory program. EPA is also providing until October 1, 2024, to comply with this requirement, so laboratories testing regulated substances in the United States or abroad have sufficient time to become accredited or certified. The Agency believes that these accreditation or certification requirements as finalized do not result in an undue compliance burden on the importer. Further, the commenter did not specify how existing auditing and verification requirements are sufficient to ensure compliance, and EPA does not see how these existing requirements would verify the contents of imported containers of regulated substances. Certificates of analysis contain information concerning import contents and sampling and testing methodology beyond that of existing auditing and verification requirements. Accreditation or certification requirements for laboratories that prepare these certificates of analysis provide additional safeguards to ensure that sampling and testing follow good laboratory practices. Therefore, EPA is finalizing requirements that sampling and testing to provide a certification of analysis must meet the same certification or accreditation requirements as all sampling and testing under 40 CFR 84.5(i)(3).

Accordingly, after considering the comments on this issue, EPA is finalizing requirements that the certificate of analysis physically accompany the import or be submitted electronically to the Agency by loading an image of the document to the Document Image System, such as is required for non-objection notices under 40 CFR 84.25 and transhipments under 40 CFR 84.31(c)(3), at the same time as the advance notice required under 40 CFR 84.31(c)(7). This requirement will provide EPA additional information to confirm the number of allowances that need to be expended at the time of import.

VIII. What other revisions is EPA finalizing?

In addition to what is outlined in the prior sections, after considering public comments EPA is finalizing a number of additional proposed regulatory changes based on both lessons learned and current practices that have proved useful in implementing the HFC phasedown.

A. Define the Term ''Expend''

Under the AIM Act and EPA's implementation of the HFC phasedown, a person must expend allowances to produce or import regulated substances outside of limited exceptions. In the Allocation Framework Rule, EPA did not codify a regulatory definition of ''expend'' in 40 CFR 84.3. EPA proposed to amend 40 CFR 84.3 to include a definition of expend, specifically to define expend to mean to subtract the number of allowances required for the production or import of regulated substances under 40 CFR part 84 from a person's unexpended allowances. In section V.A of this preamble we are codifying the point in time that determines when calendar year allowances are expended and in section V.B of this preamble we are codifying that importers of record must expend allowances. EPA is finalizing the addition of a regulatory definition of ''expend'' as proposed to accompany these regulatory revisions to provide additional specificity on how parties are required to implement these requirements.

One commenter sought clarity on how this definition of expend applies to application-specific allowance holders. The commenter stated that the proposed

definition refers only to the production or import of regulated substances and does not explain how it relates to the conferral and expenditure of allowances for application-specific allowance holders. The commenter requested that EPA clearly state if this definition applies to application-specific allowance holders and if it does, how would it apply. Under the Allocation Framework Rule, entities that are allocated application-specific allowances have the ability to use those allowances to import bulk regulated substances directly or to confer their application-specific allowances to others to enable those others to import or produce regulated substances for use in the specified application. If an entity that is allocated application-specific allowances imports bulk regulated substances directly, the entity must expend allowances to cover that import. In such an instance, the requirement to expend allowances, and the accompanying definition of ''expend,'' would apply to the application-specific allowance holder. If an entity allocated application-specific allowances confers those allowances to another entity to produce or import regulated substances on their behalf, that other entity that received the conferral would expend the allowances as needed for the import and production.

B. Modify Labeling Requirements

Under the Allocation Framework Rule, EPA codified labeling requirements in 40 CFR 84.5(i)(1) to require a person who is selling, distributing, offering for sale or distribution or importing containers containing a regulated substance that the container include ''a label or other permanent markings stating the common name(s), chemical name(s), or ASHRAE designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend.'' EPA proposed several revisions to this regulatory text. First, EPA proposed revising 40 CFR 84.5(i)(1) to require a ''permanent label'' in place of ''a label or other permanent marking.'' Among other things, EPA solicited comment on any implementation challenges associated with requiring a ''permanent label.''

EPA received several comments that strongly opposed the proposed revision from ''a label or other permanent markings'' to ''permanent label'' for several reasons, including the challenges associated with requiring a permanent label when paired with EPA's separate requirements, which were not reopened in this rulemaking, regarding refillable cylinders. Commenters explained that in such a situation affixing a permanent label for a particular regulated substance would limit the use of the container and an entity would no longer be able to use containers interchangeably (*e.g.,* they switch the type of HFC or HFC blend that they put into a cylinder once it is returned). Two commenters were also uncertain how such a requirement would be implemented and sought clarification with more details on the implementation of a permanent label. Two other commenters also asked that EPA provide further clarification on the impact the proposed revision will have on the market because certain containers would be removed from regular circulation effecting how returned containers are processed and reused which is independent of the return and demand rate of each product. After reviewing public comments filed and considering the points made by the commenters, EPA is not finalizing this proposed amendment and will leave the existing text in 40 CFR 84.5(i)(1) requiring ''a label or other permanent marking.'' EPA does note that in addition to the requirements in 40 CFR part 84, regulated parties are also required to follow all other applicable Federal regulations, including those from the Department of Transportation in 49 CFR part 172. EPA also proposed to add more detail and specificity on the regulatory labeling requirements. With slight revisions, EPA proposed to make changes to 40 CFR 84.5(i)(1) to include the following features such that all labels or other permanent markings must be:

- Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk HFC container;
- Readily visible and legible;
- Able to withstand open weather exposure without a substantial reduction in visibility or legibility;
- Displayed on a background of contrasting color; and
- If a container of regulated substances is contained within a box or other overpack, the exterior packaging must contain legible and visible information of what regulated substance is contained within.

One commenter made a general claim that EPA's proposal ''would impose labeling obligations above and beyond existing requirements,'' that any benefit of the proposal ''would appear to be minimal,'' that EPA does not cite to a particular problem the Agency is trying to solve, and that EPA should instead rely on existing regulations under OSHA and the Department of Transportation's Pipeline and Hazardous Materials Safety Administration. The commenter does not provide any specific concerns or engage with EPA's proposal in any particularity. EPA is finalizing these regulatory additions as proposed. EPA proposed these additional requirements to ensure that labels could be readily viewed, read, and understood as containers of regulated substances move across US borders and through commerce and those benefits are inherent in the form of the proposed requirements. All of the additional requirements relate to making the labels easier to view, which in turn will aid compliance and enforcement officers to identify potentially violative or fraudulent goods. These revisions are intended to help ensure that all containers of regulated substances would have labeling that is easily visible and legible and would contain information that is necessary for inspection and enforcement, as appropriate. As outlined in detail in the Allocation Framework Rule, the Agency has significant concerns about the potential for and impact of illegal trade in regulated substances. This concern is particularly heightened at the start of a new phasedown step. The requirements of the HFC phasedown are implemented at a variety of locations, including at border entries and industrial facilities. As a result, EPA relies on a diverse array of law enforcement officials to aid in compliance efforts related to the 40 CFR part 84 requirements. Without appropriate labeling, containers of regulated substances may not be readily distinguishable from containers of other products. These provisions are intended to facilitate inspections by providing durable labels that clearly identify contents.

EPA proposed as a complementary measure to add prohibitions at 40 CFR 84.5(i)(2) that no one other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. EPA proposed to change the prior text, which applies to importers, to allow only the importer of record to undertake these actions. Additionally, the prior regulatory text did not preclude relabeling; it only precluded repackaging, but the regulatory text is intended to apply to regulated substances that were ''initially mislabeled or unlabeled.'' EPA received no adverse comments on these issues and is finalizing these regulatory amendments as proposed for the reasons outlined in the proposal.

C. Clarify Ability To Move Allowances Among Companies With Certain Affiliation Without a Transfer

EPA made clear in the Allocation Framework Rule that in calculating the quantity of allowances to allocate, ''for purposes of determining the quantity of past imports, EPA is treating all companies majority owned and/or controlled by the same individual(s) as a single company, even if there is no corporate parent'' (86 FR 55145). EPA also considers all parent,[44] subsidiary,[45] sister,[46] and commonly owned [47] companies together in determining past imports. Complementarily, it is EPA's longstanding practice that allowances can be expended by parents, subsidiaries, sister, or commonly owned companies without a transfer. EPA proposed to revise the regulatory text at 40 CFR 84.19(a) to codify this practice for additional clarity for allowance holders.

EPA invited comments on potential negative implications of this proposal and on whether the proposed revisions to the text adequately capture the appropriate entities. EPA did not receive comment on this proposal or these issues and is finalizing the revision to 40 CFR 84.19(a) as proposed that allowances can be expended by parents, subsidiaries, sister, or commonly owned companies without a transfer. Given that EPA considers historic activity together for these companies in determining a single quantity of allowances to allocate, it is appropriate to allow companies in this situation to expend from the single pool of allowances through different arms of its corporate chain. Therefore, it seems inappropriate to require a transfer, including a petition to the Agency and a transfer offset, when EPA considers these commonly owned companies as a single entity for purposes of calculating and allocating allowances.

D. Revise Required Elements To Request Additional Consumption Allowances

In the Allocation Framework Rule EPA created a process, known as a RACA, by which a person may obtain consumption allowances equivalent to the quantity of regulated substances exported by that person (40 CFR 84.17). Through implementation of the existing regulations, EPA has learned that its review of RACAs could be more efficient if exporters provided additional information with their initial RACA requests, resulting in faster reviews by EPA and responses to exporters. We expect the additional information to also decrease the need for follow up requests to exporters to verify the reported information. EPA proposed to require that RACA applicants submit the following additional data points: (1) ITNs for all shipments regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN, (2) conveyance names, (3) IMOs of the vessel(s) carrying the export, as applicable and (4) container numbers (*e.g.,* ISO tank numbers). EPA requested comment on whether there are any additional data points that would aid the Agency in quickly verifying the information provided in a RACA application, including but not limited to customs release documents from the country receiving the exports and proof of receipt at the final destination. EPA also requested comment on whether any entity that may apply for a RACA would have difficulty gathering and submitting the additional data points proposed. EPA also sought comment on whether the Agency should require the reporting of certain EEI, which are data that must be filed through the Automated Export System (AES), to aid in EPA's review of RACAs to verify export data more generally similar to those required under 40 CFR 84.31(c)(7).

Several commenters were opposed to EPA's proposal to add additional required elements for RACA applications. Commenters claimed that requiring additional data points as part of RACA applications would be unnecessary and burdensome. In addition, one commenter noted that it may be difficult for an exporter to obtain additional data as they would have to rely on third parties who may not be motivated to provide such information. One commenter noted that the information on the ITN is comprehensive and should be sufficient to enable EPA review when paired with already required export documents. One commenter noted that EPA has been able to process RACAs with the information required under the Allocation Framework Rule, so it is unclear why additional data is needed.

In this final rule, EPA is revising the regulation to require, as part of an application for RACAs, ITNs for all shipments regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN. EPA is also finalizing a requirement that exporters provide all international export declaration documentation, *i.e.,* EEI, which is electronically filed within AES. EPA is not finalizing the proposal with respect to, and therefore will not be requiring, conveyance names, IMOs of the vessel(s) carrying the export, and container numbers. EPA is finalizing these additional information requirements to enable the Agency to more quickly locate exports and review RACA applications expeditiously. Through implementation of the existing 40 CFR 84.17 regulations, we learned review of RACAs could be more efficient if exporters provided additional information with their RACA requests. An ITN is received as confirmation that the EEI has been accepted in the AES. If there are multiple containers, the EEI should list containers and the net weight associated with the ITN. Having these additional data elements will enable EPA to validate reported exports against the AES. Because the corresponding AES shipment record merely validates and records the data provided as-is and may not capture data associated with the final export, EPA may request additional verification if there are discrepancies in the requested RACA amounts when compared to the AES shipment record or final export data available to EPA and CBP. RACAs may be granted only for the amounts of verified exports of bulk regulated substances.

One commenter recommended that EPA revise the existing requirement at 40 CFR 84.17(a)(8) that the exporter must submit the bill of lading as part of a request for consumption allowances for fire suppressant manufacturers or for individual bulk tanks containing less than 1,500 pounds of regulated substances. The commenter stated that in lieu of requiring the bill of lading, the Agency should accept the AES filing document and the OEM's shipping letter of instruction. The commenter argued that for fire suppressant manufacturers, the bill of lading does not always designate the agent weight, but the AES filing contains the ITN, the export date, agent weight by HTS code and the destination country, which are easily cross referenced with the commercial

[44] In referring to a parent, EPA means a company that has a majority, *i.e.* at least fifty percent, stake in another company.

[45] In referring to a subsidiary, EPA means a company that is majority, *i.e.* at least fifty percent, owned by another company.

[46] In referring to a sister company, EPA means an entity related to another entity by a shared corporation with majority ownership.

[47] In referring to a commonly owned company, EPA means a company that is related to another company by a shared individual owner or owners, where there is at least (1) a single individual that owns 30 percent or more of each company or (2) individuals with direct family relationships (parent, child, sibling, or spouse) that own a majority of each company.

invoice and shipping letter of instruction and is binding by the fact it is a CBP submittal. EPA disagrees with the commenter's recommendation to exclude fire suppressant manufacturers or small shipments from the general requirements to submit the bill of lading as part of the RACA submittal. The Agency understands that in some cases the bill of lading may not include information such as the agent weight. In such cases entities may submit supplementary documentation that provides the necessary information, such as the AES filing document and the OEM's shipping letter of instruction. EPA reiterates that entities have an obligation to include in their RACA submittal all required information to the Agency.

In the proposal, EPA also noted that it was considering amending the regulations to require that exporters provide documentation to verify an allowance was expended when the regulated substance being exported was produced or imported, though the RACA requirements finalized in the Allocation Framework Rule allow an entity to receive a refund on allowances for an export regardless of when the HFC was initially produced or imported. One commenter opposed this concept, but also requested that if this were to be finalized, EPA allow an entity to designate a year of production if regulated substances produced in different years are comingled into a large tank, vessel, or sphere, so long as the producer keeps clear and contemporaneous records. EPA is not finalizing a requirement that allowances be expended for the production or import of regulated substances in order for export of those substances to be eligible to receive RACAs.

Some commenters request that EPA revise its regulations such that allowances granted through a RACA could be used in a subsequent calendar year. One commenter noted that because of long lead times for foreign suppliers and shipping, it is difficult to apply for and obtain RACAs, and then import with allowances provided by the RACA all in one year. As noted in the prior paragraph, EPA is not requiring allowances be expended for regulated substances in order for export of those substances to be eligible to receive RACAs. Therefore, RACAs do not have to be obtained in the same year a regulated substance is produced or imported. However, EPA did not propose changes to the provision that EPA will allocate allowances through a RACA for the same calendar year in which an export occurred. Therefore, this comment is outside the scope of this rulemaking. However, if EPA were to consider the comment, the Agency disagrees with the change recommended by the commenter. EPA is maintaining the requirement that both the export and the RACA occur in the same calendar year and that any refunded allowances must also be expended in that same calendar year. This is necessary to ensure that the statutorily defined production and consumption reduction targets are met each calendar year.

One commenter requested that EPA modify the RACA application to allow for reporting exports of blends (*e.g.,* R–407C, R–410A) rather than requiring listing of HFC blend components. The commenter's request relates to how EPA has structured its form and not directly to regulatory requirements. EPA intends to make the change requested by the commenter on the RACA application form, and this alteration has been reflected in the updated ICR associated with this rule. If EPA grants a RACA request for export of a regulated substance blend, the amount of allowances refunded continues to be based on the regulated substance components of the blend, and not the blend as a whole.

One commenter requested that the exporter be authorized to request additional allowances for any person that had originally supplied the allowances expended to produce or import the exported material or, alternatively, an exporter could be authorized to designate *any* person as the recipient. The commenter argued that such flexibility would let the persons involved in production or importation followed by export to decide among themselves by contract how to handle allowances. EPA considers this comment to be outside the scope of this rulemaking since EPA did not propose any changes to the current regulation at 40 CFR 84.17(b)(1)(ii), that provides additional consumption allowances can go to the producer, importer, or exporter. If any entity receiving allowances through a RACA wants the allowances to go to a different entity, the allowances can be transferred pursuant to 40 CFR 84.19.

E. Considered Petitions To Import Regulated Substances for Laboratory Testing With Eventual Destruction

In reviewing import activity, EPA learned that some entities may import small amounts of regulated substances for laboratory testing to determine the type and amount of any impurities in the United States, after which point the substances are destroyed. The current regulations require allowances to be expended in these instances. In most situations, the regulated substances are virgin material, but may not meet the exact specifications required by the producer or for the intended applications. Even if these regulated substances could be considered used, there are no provisions in the current regulations to allow for an intermediary step (such as laboratory testing) prior to destruction without expending allowances.

Based on information available at the time of proposal, EPA did not consider laboratory testing of regulated substances that are ultimately bound for destruction as meriting an exemption from expending allowances, but EPA solicited comment on whether a petition process like that in 40 CFR 84.25(b) would be appropriate and necessary, and on the number of entities that would potentially make use of a petition process as well as the frequency and quantity of such imports. EPA stated in the proposal that the Agency would consider finalizing a petition process if compelling comments were received demonstrating that these tests cannot be performed in the countries of use or that the scope of these activities warrant a regulatory petition process. EPA noted at proposal that the frequency, quantity, and number of potentially affected entities were not fully known, though the Agency did not believe that that they were of sufficient scale to necessitate a regulatory petition process for the entities to be exempt from expending allowances.

EPA received two comments in support of such a petition process. Both commenters focused on marine applications of regulated substances, where commenters noted it can be difficult to test within a country of origin. One commenter requested that EPA allow the import of regulated substances for laboratory testing without the requirement of a petition to EPA and without a limit to keep the sample size below a certain numeric level. The other commenter requested that EPA provide an exemption or blanket permitting system that could be utilized by shipping lines to facilitate the import of a test sample of 0.5kgs or less per sample, but that after testing the regulated substance be reclaimed, not destroyed. Both commenters noted that a petition process could be beneficial, but provided little to no rationale as to why imports to conduct laboratory sampling needed to proceed without expenditure of allowances. One commenter's suggestion to not require samples to be destroyed, but rather reclaimed, following laboratory testing appears directly counter to the AIM Act. The calculation of consumption

subtracts out destruction, and therefore subsequent destruction of an imported regulated substance would result in net zero consumption if the import and destruction occur in the same calendar year. However, if a regulated substance was imported without expenditure of consumption allowances and not subsequently destroyed, those regulated substances would count toward consumption, but would not be accounted for in EPA's allowance system, and therefore would be in excess of the consumption cap established by Congress. Moving beyond this particular argument, neither commenter provided compelling reasons as to why EPA should create a unique exemption pathway for regulated substances brought in for laboratory sampling. The commenters have not provided a sufficient case to overcome the skepticism EPA noted at proposal. Therefore, EPA is not establishing such a petition process in this final rule.

IX. What are the costs and benefits of this action?

In the Allocation Framework Rule, EPA conducted a Regulatory Impact Analysis (RIA) which estimated the costs and benefits of the phasedown of HFCs directed by the AIM Act, as implemented through the Allocation Framework Rule. That RIA estimated benefits and costs for the HFC phasedown between 2022 and 2050, including assuming for analytical purposes that the allocation system would continue unchanged for years past the initial period (*i.e.,* for 2024 and beyond). This final rule continues the use of an allocation methodology that is substantially similar to the Allocation Framework Rule and this action will not result in any significant changes to the phasedown program as a whole, and thus does not fundamentally change the assumptions made in the Allocation Framework Rule RIA.

Therefore, for this action EPA is updating the Allocation Framework Rule RIA via an RIA addendum, and as described below. EPA is not conducting a new RIA because the Allocation Framework Rule already analyzed estimated benefits and costs over the time period covered by this rule. As described in this preamble, we are adjusting the consumption baseline, revising particular recordkeeping and reporting requirements, and carrying out other limited revisions to the existing regulations. These revisions would generally apply starting in 2024. In this section we discuss two discrete changes to the analysis of benefits and costs as presented in the RIA for the Allocation Framework Rule. First, we are providing an analysis of the incremental change in benefits and costs associated with the adjustment to the consumption baseline from 2024 through 2050 relative to the benefits and costs estimate for the same time period as estimated in the supporting analysis for the Allocation Framework Rule. Separately, we have adjusted estimated costs associated with the HFC phasedown from 2024 through 2050 due to updating assumptions for an abatement option used in the analysis.

This analysis is intended to provide the public with updated information on the relevant costs and benefits of this action and to comply with Executive Orders. The analysis does not form a basis or rationale for any of the actions EPA is implementing in this rulemaking. The Allocation Framework Rule, its RIA, and supporting documentation provide more detail on our analysis methodology of the costs and benefits of the HFC phasedown between 2022 and 2050, and are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0430). More information on the analysis for this action is available in an addendum to the Allocation Framework Rule's RIA in the docket for this action.

As discussed in section IV of this preamble and a memorandum titled, ''*Docket Memo on Revisions to HFC Baseline,*'' available in the docket for this rulemaking, this rule reduces the consumption baseline by 1.35 MMTEVe (approximately 0.44 percent) relative to the baseline codified in the Allocation Framework Rule at 40 CFR 84.7(b)(2). With a lower consumption baseline, more abatement will be necessary in each year starting in 2024 to reduce HFC consumption from its business-as-usual level to a level below the maximum allowed consumption. However, for the years 2029 through 2050, the abatement options modeled in the original Allocation Framework Rule RIA using the higher baseline had already sufficiently lowered consumption below the level required through the updates made in this rulemaking. As a result, no additional abatement options are needed in these years and no incremental costs are accrued. More detail is provided in the RIA addendum for this rule.

Reducing the consumption of HFCs reduces the emissions of HFCs, although the time profile of emissions reduction can vary depending on the application the HFCs are used in. For example, reducing HFCs used in aerosols may result in the avoidance of a more near-term emissions release (assuming the product would be used in the same year) while other types of equipment and products (*e.g.,* AC units) typically emit HFCs more gradually over time. Taking these dynamics into account, EPA's Vintaging Model is used to calculate consumption and emissions of HFCs under a ''business-as-usual'' forecast and an alternative scenario in which the AIM Act allowance allocation phasedowns are in effect and abatement options are undertaken. The delta between these two scenarios results in the estimated reduction in consumption and emissions of HFCs in each year resulting from this rule.

Based on this approach, EPA estimates that the lowering of the HFC baseline would reduce total HFC consumption by additional 6.34 MMTEVe and would reduce HFC emissions by an additional 0.05 MMTEVe relative to the previous estimate from the Allocation Framework Rule, for the period of 2024–2050. By multiplying the change in emissions of each HFC in each year by the social cost of HFCs for that HFC for that year, the monetary value of the climate benefits of the emissions reduction can be estimated. From 2024 through 2050 at a discount rate of 3 percent in 2020 dollars, this baseline adjustment results in incremental climate benefits of $2.9 million, costs of $175 million, and a net cost of $172.1 million. These reductions in HFC emissions and associated climate benefits are all attributable to the baseline adjustment.

As detailed in section VI and portions of other sections of this preamble, EPA is also finalizing in this rulemaking a number of updates to the recordkeeping and reporting requirements originally established in the Allocation Framework Rule. While some of these updates represent clarifications of the existing requirements, others represent additional requirements that impact the total anticipated compliance costs of this rule. The Agency notes that general testing requirements were already established under the Allocation Framework Rule. EPA expects that flexibilities offered in this action to accommodate existing credential and testing practices will result in negligible additional costs. Specific amendments resulting in additional anticipated cost burden include the annual importer of record reporting requirements and the maintenance of sampling/testing records. As a result of these updates, EPA estimates that, starting in 2024, recordkeeping and reporting costs will increase by approximately $370,570 annually relative to the previous estimates from the Allocation Framework Rule.

Taking into account both the baseline adjustment and the updated recordkeeping and reporting costs, EPA estimates the incremental cost of this rule to be $344 million from 2024 through 2050 (in 2020 dollars, using a discount rate of 3 percent). Relative to the value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050 that was originally calculated in the RIA for the Allocation Framework Rule, this increase represents a 0.1 percent decrease in cumulative net benefits. Although EPA is using the social costs of HFCs for purposes of this analysis, this action does not rely on the estimates of these costs as a record basis for the Agency action, and EPA would take the same final action even in the absence of the social costs of HFCs.

EPA also updated an abatement option used in the analysis to reflect the most recently available information. Specifically, the previous analysis assumed that some consumption of HFC–134a could be abated by transitioning the foam-blowing agent used to produce extruded polystyrene (XPS) boardstock foam. If XPS foam producers shifted from using a combination of HFC–134a and CO_2 to a mixture of liquid carbon dioxide (LCD) and alcohol, all of the HFC consumption associated with producing XPS foam could be avoided. However, prior to this rulemaking EPA received comment from two foam manufacturers that the abatement option of using LCD/alcohol has not been proven to meet the safety and performance standards required in the United States and would not be a viable option. While the LCD/alcohol technology is successfully used in other countries, we understand that U.S. companies expect XPS foam production to transition from using HFC–134a/CO_2 to blends containing a hydrochlorofluoroolefin and/or an HFO. This revision of an abatement option did not result in any changes to the emissions or benefits, because these options are applied to reduce consumption to the respective phasedown step. The updated assumption resulted in a cost increase of $2.7 billion from 2024–2050 at a 3 percent discount rate relative to the prior estimate provided with the Allocation Framework Rule RIA. The effect is slightly less than a 1 percent change in the estimated net benefit of the HFC phasedown in 2022–2050. This revision solely reflects a change in assumptions. It is not the result of a regulatory change and does not reflect a change in costs from actions finalized in this rule.

EPA received two comments stating that the Agency did not support assumptions made in the analysis of costs and benefits associated with the proposed rulemaking, particularly noting burdens imposed due to proposed same day documentation requirements and recordkeeping and reporting requirements for small businesses. Another commenter questioned whether EPA had fully analyzed the burdens associated with the proposed same day documentation of allowance expenditures, stated that the Agency did not document the associated burden. The same commenter stated that EPA was incorrect in its assumption in the economic impact screening analysis that small businesses were not expected to experience any additional compliance or administrative costs due to proposed recordkeeping and reporting changes. The commenter did not cite any particular costs that may be incurred by small businesses, but noted generally that the Agency proposed new recordkeeping and reporting requirements.

EPA is not finalizing the proposed same day documentation requirements and there will be no associated costs. Accordingly, in the RIA addendum included in the docket for this action the Agency does not assess potential costs of such a requirement. In response to comments, EPA acknowledges that there are minor additional costs associated with the revised recordkeeping and reporting changes which were not accounted for in this rulemaking's proposal, *i.e.,* as discussed earlier in this section, the annual importer of record reporting requirements and the maintenance of sampling/testing records. In this action the Agency analyzed and incorporated those costs of $370,570 into the RIA addendum and economic screening analysis.

Another commenter stated that the economic screening analysis did not support its assumption that additional HFC could be purchased at a 10 percent premium if entities had not received sufficient allowances for their operational needs. The commenter further stated that in its screening analysis the Agency did not assess availability and pricing of domestic HFC supply (whether virgin or reclaimed), consumer acceptability, supply chain disruptions, and equipment compatibility together as related factors.

EPA disagrees with the assertion that its modeling assumption of HFC pricing was unsupported and that its analysis did not consider related factors in its assessment of potential economic impacts. The Agency notes its discussion of these issues in the screening analysis. Based on past experience with the ODS phaseout, the Agency understands its assumptions to be reasonable. Anecdotal feedback indicates that HFC prices increased in 2021 and 2022 based on a number of factors, including supply chain disruptions, a global pandemic, antidumping duties and other tariffs, passage of the AIM Act, and the Allocation Framework Rule. However, in its analysis EPA used the independent price information available to the Agency. EPA also explained that transitioning to substitutes, increased recovery, reclamation, leak reduction, and prior inventory in combination support the assumption that sufficient domestic supply of HFCs will be available for entities to meet demand without significant price increases. This assumption is based on estimates of refrigerant available for recovery and reclamation from EPA's Vintaging Model,[48] actual reclamation amounts reported to EPA,[49] and a review of the available servicing tail from previous EPA rulemakings related to the HCFC Allocation System. Additionally, consistent with the ODS phaseout, we expect that inventory built prior to 2022 (and to a lesser extent in 2022 and 2023) will also be a source of HFCs for the market in 2024 and later years. The commenter did not explain the relevance of consumer acceptability as a related factor. EPA is unaware of a reason that HFCs or HFC substitutes would be unacceptable to consumers. The Agency also notes that, unlike the chemical-specific allocation system for HCFCs during the ODS phaseout, EPA is issuing allowances on an exchange value-weighted basis through the HFC phasedown program. This, in combination with opportunities described above in this paragraph to transition to substitutes, increase recovery, reclaim, reduce leaks, and use prior inventory, provides flexibility for entities to manage potential issues with equipment computability. While the Agency's past experience phasing out ODS did not show a clear correlation between reduction in allocations and price in these markets, and EPA acknowledges that there may be differences in market responses between the ODS phaseout and HFC phasedown, EPA conservatively used a 10 percent

[48] U.S. Environmental Protection Agency (EPA). 2022b. Vintaging Model. Version VM IO file_v5.1_03.23.22.

[49] U.S. Environmental Protection Agency (EPA). 2020. Summary of Refrigerant Reclamation Trends. July 2020. Available online at: *https://www.epa.gov/section608/summary-refrigerant-reclamation-trends.*

increase in domestically sourced HFCs relative to the current price to model potential impacts on small businesses.

For informational purposes, considering the incremental change to the consumption baseline associated with this rule, updates to recordkeeping and reporting costs, and the separate update to the analytical model described further in the addendum in the docket for this rulemaking, the present value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050 is now estimated to be $269.9 billion.

X. How is EPA considering environmental justice?

As part of the RIA addendum for the proposed rulemaking, EPA updated the environmental justice analysis that was previously conducted for the Allocation Framework Rule. The updated environmental justice analysis used the same analytical approach used previously, along with updated data on cancer and respiratory risks. The analysis also included the addition of another facility that reported HFC production and reviewed TRI data for 2020 and 2021.

Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) establish Federal executive policy on environmental justice. Executive Order 14096, signed April 21, 2023, builds on the prior Executive Orders to further advance environmental justice (88 FR 25251).

Executive Order 12898's main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on people of color and low-income populations in the United States. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.[50] Meaningful involvement means that: (1) Potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory Agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.[51] The term ''disproportionate impacts'' refers to differences in impacts or risks that are extensive enough that they may merit Agency action. In general, the determination of whether there is a disproportionate impact that may merit Agency action is ultimately a policy judgment which, while informed by analysis, is the responsibility of the decision-maker. The terms ''difference'' or ''differential'' indicate an analytically discernible distinction in impacts or risks across population groups. It is the role of the analyst to assess and present differences in anticipated impacts across population groups of concern for both the baseline and proposed regulatory options, using the best available information (both quantitative and qualitative) to inform the decision-maker and the public.[52]

A regulatory action may involve potential environmental justice concerns if it could: (1) create new disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples through the action under development.

Executive Order 14008 calls on agencies to make achieving environmental justice part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' Executive Order 14008 further declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure, and health care.'' In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to ''take into account the distributional consequences of regulations, including as part of a quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities'' (86 FR 7223, January 26, 2021). EPA also released its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.

In the Allocation Framework Rule, EPA established the baselines for the production and consumption of regulated substances, determined the quantity of allowances that would be available nationwide according to the AIM Act's phasedown schedule, and created an allowance allocation and trading program. EPA also summarized the public health and welfare effects of GHG emissions (including HFCs), including findings that certain parts of the population may be especially vulnerable to climate change risks based on their characteristics or circumstances, including the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or limited resources due to factors including but not limited to geography, access, and mobility (86 FR 55124–55125). Potential impacts of climate change raise environmental justice issues. Low-income communities can be especially vulnerable to climate change impacts because they tend to have more limited capacity to bear the costs of adaptation and are more dependent on climate-sensitive resources such as local water and food supplies. In corollary, some communities of color, specifically populations defined jointly by both ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States.

[50] See, *e.g.,* ''Environmental Justice.'', EPA, 4 March 2021, *https://www.epa.gov/environmentaljustice.*

[51] The criteria for meaningful involvement are contained in EPA's May 2015 guidance document ''Guidance on Considering Environmental Justice During the Development of an Action.'' EPA, 17 February. 2017, *www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action.*

[52] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 guidance document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' EPA, *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

EPA has not assessed climate-based impacts to communities that surround HFC production facilities for this rule or as part of the Allocation Framework Rule. The location of HFC production facilities has no significant bearing on the climate impacts that these communities will experience.

As detailed in the Allocation Framework Rule and its accompanying RIA, the phasedown of HFCs in the United States will achieve significant benefits associated with reducing climate change. However, as described in the RIA for the Allocation Framework Rule and in the RIA addendum for this rule, there continues to be significant uncertainty about how the phasedown of HFC production, the issuance of allowances, and market trends independent of this rulemaking could affect production of HFCs and HFC substitutes—and associated air pollution emissions—at individual facilities, particularly in communities that are disproportionately burdened by air pollution.

Characteristics of Communities Surrounding HFC Production Facilities

For the environmental justice analysis performed to support the Allocation Framework Rule, EPA reviewed the available evidence from the published literature and from community input on what factors may make population groups of concern more vulnerable to adverse effects (*e.g.,* cumulative exposure from multiple stressors), including but not limited to the 2009 and 2016 Endangerment Findings and the reports from IPCC, the US Global Change Research Program, and the National Research Council. It was also important to evaluate the data and methods available for conducting an environmental justice analysis.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an environmental justice analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline and regulatory options. Where applicable and practicable, the Agency's RIA examined certain metrics for an environmental justice analysis comprising more than just climate change effects, including: the proximity of entities receiving allowances to populations disaggregated by race and ethnicity, low-income populations, and/or indigenous peoples; the number of entities receiving allowances that may be adversely affecting population groups of concern; the nature, amounts, and location of regulated HFC production facilities that may adversely affect population groups of concern; and potential exposure pathways associated with the production of the regulated HFCs or with chemicals used as feedstocks, catalysts, or byproducts of HFC production unique to particular populations (*e.g.,* workers). The environmental justice analysis is described in the RIA for the Allocation Framework Rule and is based on public data from the TRI, GHGRP, EJSCREEN (an environmental justice mapping and screening tool developed by EPA), Enforcement and Compliance History Online, and Census data. In addition, the analysis integrated suggestions received during the public comment period to the extent possible. The environmental justice analysis also contains information on non-production releases (as defined by TRI), water releases, and offsite disposal for chemicals used in HFC production. The analysis of potential environmental justice concerns focused mainly on characterizing baseline emissions of air toxics that are also associated with chemical feedstock use for HFC production. As noted in the RIA for the Allocation Framework Rule, there is uncertainty around the role that HFC production plays in emissions of these air toxics. In addition, EPA conducted a proximity analysis to examine community characteristics within one and three miles of these facilities. The Agency also explored larger radii (5 and 10 miles) in response to public comments that releases from these facilities may travel longer distances.

The relatively small number of facilities directly affected by the proposed rulemaking enabled EPA to assemble a uniquely granular assessment of the characteristics of these facilities and the communities where they are located. The environmental justice analysis, which examines racial and economic demographic and health risk information, found heterogeneity in community characteristics around individual facilities. The analysis showed that the total baseline cancer risk and total respiratory risk from air toxics (not all of which are due to emissions from HFC production) varies, but is generally higher, and in some cases much higher, within 1 to 10 miles of an HFC production facility. The analysis also found that higher percentages of both low-income and Black or African American individuals live near several HFC production facilities compared with the appropriate national and state level average. EPA noted in the final rule for the Allocation Framework Rule, and reiterates here, that it is not clear the extent to which these baseline risks are directly related to HFC production, but some feedstocks, catalysts, and byproducts are toxic (*e.g.,* carbon tetrachloride, tetrachloroethylene, and trichloroethylene (TCE) and some are potentially carcinogenic. All HFC production facilities are near other industrial facilities that could contribute to the Air Toxics Screening Assessment (AirToxScreen) cumulative cancer and respiratory risk; the number of neighboring TRI facilities within one mile of an HFC production facility ranges from 1 to 13, within 3 miles there are 2 to 20 neighboring TRI facilities, within 5 miles there are 2 to 33 neighboring TRI facilities, and within 10 miles there are 6 to 67 neighboring TRI facilities.

It is not clear how emissions related to HFC production compare to other chemical production at the same or nearby facilities. Additionally, some HFC substitutes, such as HFOs, use the same chemicals as feedstocks in their production or release the same chemicals as byproducts, potentially raising concerns about local exposure. Emissions from production facilities manufacturing non-fluorinated substitutes (*e.g.,* hydrocarbons and ammonia) could also be affected by the phasedown of HFCs. However, there is still limited information regarding how much of each substitute would be produced, which substitutes would be used, and what other factors might affect production and emissions at those locations, so it continues to be unclear to what extent this rule may affect baseline risks from HAP for communities. Further, the HFC phasedown schedule prescribed by Congress—with a 40 percent reduction by 2024, a 70 percent reduction by 2029, an 80 percent reduction by 2034 and an 85 percent reduction by 2036—may also reduce the potential for a facility to increase emissions above current levels for a prolonged period, if at all. EPA reiterates its commitment to continue monitoring the impacts of this program on HFC and substitute production, and emissions in neighboring communities, as we move forward to implement this rule.

As described in the proposed rulemaking, EPA updated the environmental justice analysis that was done as part of the Allocation Framework Rule. Not much time has elapsed since this rule was signed in September 2021, and the Agency still does not have enough data to determine how the implementation of the HFC phasedown may affect production and

emissions at facilities that produce HFCs and their substitutes. For this reason, EPA followed the analytical approach used in the Allocation Framework Rule RIA to provide updated data on the total number of TRI facilities near HFC production facilities and the cancer and respiratory risks to surrounding communities. This update included the use of the most recent data available for the AirToxScreen data set from 2019, replacing the 2014 National Air Toxics Assessment (NATA) data used in the previous analysis. Additionally, EPA updated the list of HFC production facilities as part of this analysis to include an additional ninth facility that reported production of HFCs in 2022. Finally, EPA has updated the list of toxic chemicals potentially used as a feedstock or catalyst or released as a byproduct of HFC production based on information reported to EPA under the Allocation Framework Rule (see 40 CFR 84.31(b)(1)).

In addition, EPA included a demonstration of a microsimulation approach to analyze the proximity of communities to potentially affected HFC production facilities. Microsimulation is a technique relying upon advanced statistics and data science to combine disparate survey and geospatial data. It has long been used in a variety of economic and social science research and has been used before by EPA (in the context of understanding the implications of underground storage tank impacts on groundwater). Recent advances in data science and computational power have increased the availability of microsimulation for applications such as environmental justice analysis. The demonstration analysis included in the RIA addendum contributes to understanding communities that may warrant further environmental justice analysis.

The updated environmental justice analysis found that for eight of the nine facilities identified as HFC producers, the demographic data are identical to that included in the Allocation Framework Rule RIA. The racial, ethnic, and income figures for the 8 communities within 1, 3, 5, and 10 miles of the respective facilities are drawn from the most recent American Communities Survey data from 2019. Using the updated 2019 AirToxScreen data, the total cancer risk and total respiratory risk generally decreased compared with the previous analysis for the communities surrounding several production facilities. Additionally, looking across the nine HFC production facilities, the risks from air emissions (not all of which necessarily stem from HFC production), while varied, were still generally higher, and in some cases much higher, within one to three miles of an HFC production facility and compared with the overall national and state averages.

For the additional ninth facility, Islechem, the total cancer risk and total respiratory risk within 1 to 10 miles of the facility were similar to or lower than the risks based on the national and state average. The proportion of low-income and Black or African American and other communities of color were lower than the national and state averages and increased with increasing distance from this facility.

Characteristics of Communities Surrounding HFC Substitutes Production Facilities

As mentioned above in this section, emissions from facilities producing fluorinated and non-fluorinated substitutes may also be affected by the phasedown of HFCs. In the Technology Transitions rulemaking under the AIM Act (proposal at 87 FR 76838, December 15, 2022), EPA is conducting an environmental justice analysis to assess the potential impacts of that proposed rulemaking by examining the characteristics of communities near facilities producing HFC substitutes (*e.g.,* hydrocarbons, CO_2, ammonia, HFOs) used in the sectors or subsectors addressed in the petitions.

With the restriction on use of certain HFCs, EPA anticipates that the production of HFC substitutes will increase. Accordingly, for the environmental justice analysis for the proposed Technology Transitions Rule, EPA identified 14 facilities producing predominant HFC substitutes that may be impacted by that rule and where production changes may impact nearby communities. Overall, the Technology Transitions Rule will reduce GHG emissions, which will benefit populations that may be especially vulnerable to damages associated with climate change. However, the manner in which producers transition from high-GWP HFCs could drive changes in future risk for communities living near facilities that produce HFC substitutes, to the extent the use of toxic feedstocks, byproducts, or catalysts changes, and those chemicals are released into the environment with adverse local effects.

The analysis for the proposed Technology Transitions Rule showed that a higher proportion of individuals identified as African American or Black and as Hispanic with respect to race live in proximity to the identified facilities compared with the national average or the rural areas national average. Importantly, the comparison to the rural area national average is more striking, because so many of the facilities are rural. While median income is not significantly different for the communities near the facilities (slightly lower than the national average but slightly above or equal to the rural median income), there is a higher proportion of very low-income households in these communities. Additionally, total cancer risk and total respiratory risk is higher than either the rural national average or the overall national average in communities near the facilities. The analysis shows that the risks are higher for those within the 1-mile average radius and decrease at the 3-mile, 5-mile, and 10-mile radii.

EPA notes that the averages may obfuscate potentially large differences in the community characteristics surrounding individual production facilities. Analysis of the demographic characteristics and AirToxScreen data for the 14 identified facilities shows that there are significant differences in the communities near these facilities. The racial, ethnic, and income results are varied but, in almost all cases, total cancer risk and total respiratory risk are higher for the communities in proximity to the sites than to the appropriate (rural or overall) average when compared with the national or state results.

Additionally, some facilities are in communities that are quite different from the aggregate results discussed in this section above. The aggregate results show that the communities near the facilities tend to have a slightly lower proportion of neighboring individuals identified as White and a higher proportion identified as African American or Black and as Hispanic with respect to race, in several cases. In several cases, however, the communities near specific facilities have higher percentages of White individuals than either the state or national averages.

More information was provided in conjunction with that proposed rulemaking, and EPA intends to issue the final rule later this year.

EPA sought input on the environmental justice analysis contained in the RIA addendum for the proposed rulemaking for this action, as well as broader input on other health and environmental risks the Agency should assess. In the proposed rulemaking, EPA sought data or analysis to identify whether it is reasonable to expect net increases in emissions, and if so, how we might analytically isolate the impacts of this program (*e.g.,* effects resulting from the phasedown itself, the trading of production allowances, or some other factor) that would enable the

Agency to conduct a more nuanced analysis of changes in releases associated with chemical feedstocks and byproducts for HFC substitutes, given the inherent uncertainty regarding where, and in what quantities, substitutes will be produced. EPA sought comment and further discussion of the use of microsimulation approaches and techniques for the RIA addendum and other program activities. The Agency sought comment on whether updating the analysis provided with the Allocation Framework Rule would be useful and what additional insight it might provide for the environmental justice analysis.

EPA received one comment related to the environmental justice analysis in the RIA. The commenter stated that there was no analysis in the RIA addendum's environmental justice analysis of how emissions of various HFC feedstocks, catalysts, and byproducts affect nearby communities, and asserted that it would be important to know for each facility which chemicals were included and their impact on cancer and respiratory risks. The commenter also stated that because the RIA addendum doesn't quantify TCE feedstock emissions from HFC/HFO production, it is not possible to understand the impact of TCE feedstock on their facility's fenceline concentrations without substantial supplementation of record. They explained that there were multiple chemical facilities near their facility, and their TCE feedstock emissions account for less than 0.1 percent of total cancer risk.

EPA acknowledged in the RIA addendum for this rulemaking's proposal the many limitations of the environmental justice analysis, as described by the commenter, including the fact that each facility generally produces several chemical products and nearby communities are exposed to multiple sources of toxic emissions. Due to the lack of consistent data, the Agency was not able to analyze community exposures from and risks due specifically to feedstocks, catalysts, and byproducts used in HFC production. Due to these limitations, EPA has stated in the environmental justice analysis in the RIA addendum that the Agency cannot make conclusions about the impact of this rule on individuals or specific communities. Instead, the analysis serves to identify the characteristics of communities surrounding HFC production facilities to better ensure that future actions, as more information becomes available, can improve outcomes. However, EPA has updated the environmental justice analysis accompanying this final rule to include a list of chemicals that may potentially be associated with HFC production. It also provides 2019 through 2021 TRI data for each facility, including the reported air emissions for chemicals that may be associated with HFC production. See new section 6.4 of the final RIA addendum.

The commenter also stated that the RIA addendum needs to be updated to reflect 2018 AirToxScreen data, which shows a lower total potential cancer risk than the 2014 NATA data and 2017 AirToxScreen. EPA agreed that the environmental justice analysis in the RIA addendum needed to reflect more recent data. As described above, EPA updated the environmental justice analysis to include the most recent 2019 AirToxScreen dataset released.

XI. Judicial Review

The AIM Act provides that certain sections of the 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. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

The final action herein noticed is ''nationally applicable'' within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide. 42 U.S.C. 7675(e)(2)(B)–(D). In this rulemaking, EPA is adjusting the baseline from which that total number of allowances is derived. The action noticed herein establishes a methodology to distribute that finite set of allowances in a nationally applicable rule. EPA is also establishing other nationally applicable regulations for reporting, recordkeeping, and other implementation measures. In the alternative, to the extent a court finds the final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[53] In deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit's authoritative centralized review, rather than allowing development of the issue in other contexts, in order to ensure consistency in the Agency's approach to allocation of allowances in accordance with EPA's national regulations in 40 CFR part 84. The final action treats all affected entities consistently in how the 40 CFR part 84 regulations are applied. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit's administrative law expertise and facilitate the orderly development of the basic law under the AIM Act and EPA's implementing regulations. The Administrator also finds that consolidated review of the action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different regulated entities. The Administrator also finds that a nationally consistent approach to the issues addressed in this rule constitutes the best use of agency resources. The Administrator is publishing his finding that the action is based on a determination of nationwide scope or effect in the **Federal Register** as part of this action. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that the final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. 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 District of Columbia Circuit by September 18, 2023.

[53] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

XII. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'' as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis ''*Addendum to the Regulatory Impact Analysis for the Phasedown of Hydrofluorocarbons*'' is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0430) and is briefly summarized in section IX of this preamble, titled, ''What are the costs and benefits of this action?''.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that EPA prepared has been assigned EPA ICR number 2685.04 and revises OMB Control No. 2060–0734. You can find a copy of the ICR in the docket for this rule (Docket ID. No. EPA–HQ–OAR–2022–0430), and it is briefly summarized here.

Subsection (d)(1)(A) of the AIM Act specifies that on a periodic basis, but not less than annually, each person that, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to EPA a report that describes, as applicable, the quantity of the regulated substance that the person: produced, imported, and exported; reclaimed; destroyed by a technology approved by the Administrator; used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or, used as a process agent. EPA collects such data regularly to support implementation of the AIM Act's HFC phasedown provisions. EPA requires quarterly reporting to ensure that annual production and consumption limits are not exceeded. It is also needed for EPA to be able to review allowance transfer requests, of which remaining allowances is a major component of EPA's review. In addition, EPA collects information to calculate allowances, to track the movement of HFCs through commerce, and to require auditing. Collecting these data elements allows EPA to confirm that the entity has not exceeded its allowed level of production and consumption and that the aggregated annual quantity of production and consumption in the United States does not exceed the cap established in the AIM Act. As described above in this preamble, EPA is finalizing revisions to the recordkeeping and reporting requirements and new requirements.

All information sent by the submitter electronically is transmitted securely to protect information that is CBI or claimed as CBI consistent with the confidentiality determinations made in the Allocation Framework Rule. The reporting tool guides the user through the process of submitting such data. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements.

For reference, EPA continued to use data collected under the ICR for the GHGRP (OMB Control No. 2060–0629) as well as the associated reporting tool, the e-GGRT in developing this rulemaking. EPA also earlier requested an emergency ICR for a one-time collection request pertaining to data necessary to establish the U.S. consumption and production baselines as well as to determine potential producers, importers, and application-specific end users who were not subject to the GHGRP (OMB Control No. 2060–0732). EPA is not revising either ICR through this rule.

Respondents/affected entities: Respondents and affected entities will be individuals or entities that produce, import, export, transform, distribute, destroy, or reclaim certain HFCs that are defined as a regulated substance under the AIM Act. Respondents and affected entities will also be individuals and entities who produce, import, or export products in six statutorily specified applications: a propellant in metered dose inhalers; defense sprays; structural composite preformed polyurethane foam for marine and trailer use; the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector; mission-critical military end uses, such as armored vehicle and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and, on board aerospace fire suppression.

Respondent's obligation to respond: Mandatory (AIM Act).

Estimated number of respondents: 10,234.

Frequency of response: Quarterly, biannual, annual, and as needed depending on the nature of the report.

Total estimated burden: 58,057 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,931,630 per year, includes $1,028,100 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action include those that may produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. EPA estimates that approximately 35 of the 276 potentially affected small businesses could incur costs in excess of 1 percent of annual sales and that approximately 28 small businesses could incur costs in excess of three percent of annual sales. Because there is not a significant number of small businesses that may experience a significant impact, it can be presumed that this action will have no SISNOSE. Details of this analysis are presented in ''*Economic Impact Screening Analysis for Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years.*'' (Docket ID EPA–HQ–OAR–2022–0430).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. EPA is not aware of tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, EPA also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and has shared information on this rulemaking through this and other fora.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health and welfare effects of climate change on children.

GHGs, including HFCs, contribute to climate change. The GHG emissions reductions resulting from implementation of this rule would further improve children's health. The assessment literature cited in EPA's 2009 and 2016 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects. The assessment literature since 2016 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience.

These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses, and mental health effects resulting from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with heat waves, storms, and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households. More detailed information on the impacts of climate change to human health and welfare is provided in section III.B of the Allocation Framework Rule.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act and Incorporation by Reference

This action involves technical standards. EPA is allowing the use of ASTM D6064–11, ASTM D6231/D6231M–21, ASTM D6541–21, and ASTM D6806–02 as relevant for sampling and testing performed on regulated substances. ASTM D6064–11 addresses specification requirements for HFC–227ea as a fire-fighting medium, references relevant sampling requirements, and prescribes test method procedures using gas-liquid chromatography. ASTM D6231/D6231M–21 addresses specification requirements for HFC–125 as a fire-fighting medium and references relevant sampling and testing requirements, including purity testing in accordance with ASTM D6806. ASTM D6541–21 addresses specification requirements for HFC–236fa as a fire-fighting medium and references relevant sampling and testing requirements, including purity testing in accordance with ASTM D6806. ASTM D6806–02 provides a general standard procedure for determining impurities, stabilizers, and assays of halogenated organic solvents and their admixtures by gas chromatography. ASTM D6806–02 does not provide a specific method of gas chromatography, but rather defines provide performance-based specifications of what is required for a user to demonstrate that a method to be used is valid. EPA is incorporating by reference ASTM D6064–11 (reapproved 2022), ASTM D6231/D6231M–21, ASTM D6541–21, and ASTM D6806–02 (reapproved 2022). These standards are available for purchase from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428; tel.: 610.832.9500; *service@astm.org;* website: *https://www.astm.org/,* or *https://www.astm.org/d6064-11r22.html, https://www.astm.org/d6231_d6231m-21.html, https://www.astm.org/d6541-21.html,* and *https://www.astm.org/d6806-02r17.html.* The cost of electronic copies are $57 for ASTM D6064–11 (reapproved 2022), $50 for ASTM D6231/D6231M–21, $50 for ASTM D6541–21, and $50 for ASTM D6806–02 (reapproved 2022). The cost of obtaining these testing methods are not a significant financial burden for laboratories. The Agency is including ISO 17025 and the AHRI Refrigerant Testing Laboratories Certification Program among the accreditation and certification requirements for testing laboratories. Accordingly, the Agency is incorporating by reference ISO/IEC 17025:2017(E), General requirements for the competence of testing and calibration laboratories, Third Edition, published November 2017, the AHRI Refrigerant Testing Laboratory Certification Program Operations Manual Dec 2019 (AHRI RTL OM), and the AHRI General Operations Manual Jan 23 (AHRI General OM). ISO/IEC 17025:2017(E) specifies general requirements for competence, impartiality, and consistent operation of laboratories. The standard is applicable to all organizations performing laboratory activities, regardless of the number of personnel. This standard is available for purchase from Techstreet at 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108; tel.: 855.999.9870; email: *store@techstreet.com;* website: *http://www.techstreet.com/,* or *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.* The cost of an electronic copy of ISO/IEC 17025:2017(E) is approximately $162. The cost of obtaining this accreditation standard is not a significant financial burden for laboratories. The AHRI Refrigerant Testing Laboratory Certification Program specifies requirements to validate that

laboratories can accurately perform the test methods prescribed in AHRI Standard 700 on any refrigerant. The AHRI RTL OM outlines the procedures and policies of the Performance Rating of the RTL Certification Program operated by AHRI. This AHRI RTL OM is used in conjunction with the AHRI General OM for AHRI Certification Programs, which outlines the general procedures and policies of the Performance Certification Program operated by AHRI. Where the AHRI General OM and the AHRI RTL OM differ, the product-specific AHRI RTL OM prevails. These standards are freely available from AHRI at 2311 Wilson Boulevard, Suite 400, Arlington, VA 22201, tel.: 703.524.8800; website: *https://www.ahrinet.org.* Therefore, EPA concludes that the ASTM, ISO/IEC 17025:2017(E), and AHRI standards being incorporated by reference are reasonably available.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. EPA carefully evaluated available information on HFC production facilities and the characteristics of nearby communities. Based on EPA's analysis, as discussed in section X of this preamble, EPA finds evidence of environmental justice concerns near HFC production facilities from cumulative exposure to existing environmental hazards in these communities. Further details of this analysis are presented in ''*Addendum to the Regulatory Impact Analysis for the Phasedown of Hydrofluorocarbons.*'' (Docket ID EPA–HQ–OAR–2022–0430).

EPA believes that it is not practicable to assess whether this action is likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. The Agency recognizes that phasing down the production of HFCs may cause significant changes in the location and quantity of production of both HFCs and their substitutes, and that these changes may in turn affect emissions of HAP at chemical production facilities. Given uncertainties about which and in what quantities HFC substitutes will be produced, EPA cannot determine how this rule would affect existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898. This rule will continue to reduce emissions of potent GHGs relative to what those effects would have been without the HFC phasedown, which as noted earlier in section II of this preamble and the Allocation Framework Rule will reduce the effects of climate change, including the public health and welfare effects on overburdened and underserved communities such as low-income communities and communities of color, and/or indigenous peoples. In the Allocation Framework Rule and this action EPA additionally identified and addressed environmental justice concerns by assessing available information to analyze baseline human health or environmental conditions, conducting updated analyses based on more recently available data, and providing meaningful participation opportunities for people of color, low-income populations and/or Indigenous peoples or tribes. In the Allocation Framework Rule and this rulemaking, EPA also solicited comment on whether these changes pose risks to communities with environmental justice concerns and what steps, if any, should be taken either under the AIM Act or under EPA's other statutory authorities to address any concerns that might exist. The information supporting this Executive Order review is contained in section X of this preamble, and our environmental justice analysis in the RIA addendum, available in the docket for this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action qualifies under the CRA's definition set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA is amending 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart A—Production and Consumption Controls

■ 2. Amend § 84.3 by adding the definitions ''Batch'', ''Berth'', ''Certificate of analysis'', ''Commonly owned'', ''Expend'', ''Fire suppressant recycler'', ''Majority owned'', ''Repackagers'', and ''Representative sample'' in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Batch means a vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers regulated substances directly for sale or distribution, or for repackaging for sale or distribution; or a population of small vessels, containers, or cylinders with the same nominal composition that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

Berth means to moor a ship in its allotted place at a wharf or dock.

* * * * *

Certificate of analysis means a document that certifies the contents of an import meets the nominal composition following sampling and testing requirements prescribed in § 84.5(i)(3) for the appropriate regulated substance or blend of regulated substances.

* * * * *

Commonly owned: An entity that is related to another entity by a shared individual natural person(s), where either:

(1) There is at least a single individual that owns 30 percent or more of each entity; or

(2) Individuals that share a direct family relationship (parent, child, sibling, or spouse) own a majority of each entity.

* * * * *

Expend means to subtract the number of allowances required for the

production or import of regulated substances under this part from a person's unexpended allowances.

* * * * *

Fire suppressant recycler means, generally, an entity that collects used HFC fire suppressants and directly resells those collected and aggregated HFCs—with or without any additional reprocessing—to another entity for reuse as a fire suppressant (also referred to as a ''recycler for fire suppression'' in this subpart). An entity that collects and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. An entity that resells HFC fire suppressants that have already been reprocessed for use as a fire suppressant by another entity would not be a fire suppressant recycler.

* * * * *

Majority owned means when a corporate entity has at least a fifty percent stake in another entity.

* * * * *

Repackagers means entities who transfer regulated substances, either alone or in a blend, from one container to another container prior to sale or distribution or offer for sale or distribution. An entity that services system cylinders for use in fire suppression equipment and returns the same regulated substances to the same system cylinder it was recovered from after the system cylinder is serviced is not a repackager.

Representative sample means a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of regulated substance(s) in an unbiased and precise manner; and a sample that can be used to infer that the composition of regulated substance(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch, are within stated tolerances.

* * * * *

■ 3. Effective October 1, 2024, amend § 84.3 by adding the definition ''laboratory testing'' in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Laboratory testing means the use of the sampling and testing methodology prescribed in § 84.5(i)(3) by a laboratory that is accredited to ISO 17025 in accordance with ISO/IEC 17025:2017(E) (incorporated by reference, see § 84.37), or certified under the AHRI Refrigerant Testing Laboratory Certification Program in accordance with the AHRI RTL OM and AHRI General OM (both incorporated by reference, see § 84.37), or recognized under OSHA's Nationally Recognized Testing Laboratory program in accordance with requirements codified at 29 CFR 1910.7.

* * * * *

■ 4. Amend § 84.5 by:

■ a. In paragraph (b)(1) introductory text, after the text ''substances,'' adding the text ''either as a single component or a multicomponent substance,'';

■ b. Revising paragraph (b)(1)(i);

■ c. Removing the word ''or'' at the end of paragraph (b)(1)(iii);

■ d. Removing the period at the end of paragraph (b)(1)(iv) and adding ''; or'' in its place;

■ e. Adding paragraph (b)(1)(v);

■ f. Redesignating paragraphs (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7) and adding a new paragraph (b)(2);

■ g. Revising the newly redesignated paragraph (b)(3); and

■ h. Revising paragraphs (d) and (i).

The additions and revisions read as follows:

§ 84.5 Prohibitions relating to regulated substances.

* * * * *

(b) * * *

(1) * * *

(i) If the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend. The required amount of allowances must be calculated to the tenth, but a minimum expenditure of 0.1 allowances is required for any import of regulated substances;

* * * * *

(v) All imports pursuant to paragraph (b)(1)(i) or (ii) of this section must be physically accompanied by a certificate of analysis, if the certificate of analysis has not been electronically submitted pursuant to § 84.31(c)(7)(xvi).

(2) No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in § 84.5(b)(1).

(3) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in paragraph (b)(1)(i) or (v) of this section or another party who meets the definition of an importer met one of the exceptions set forth in paragraphs (b)(1)(ii) through (iv) of this section.

* * * * *

(d) *Calendar-year allowances.* All production, consumption, and application-specific allowances may only be expended for production or import occurring in the calendar year for which the allowances are allocated (*i.e.,* January 1 through December 31). No person may expend, transfer, or confer a production, consumption, or application-specific allowance after December 31 of the year for which it was issued. Entities may transfer or confer their production, consumption, or application-specific allowances before January 1 of the calendar year for which the allowances were allocated.

* * * * *

(i) *Labeling.* (1) As of January 1, 2022, no person may sell or distribute, offer for sale or distribution, or import containers containing a regulated substance that lacks a label or other permanent markings stating the common name(s), chemical name(s), or ASHRAE designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend. The label or other permanent markings must be:

(i) Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk regulated substance container;

(ii) Readily visible and legible;

(iii) Able to withstand open weather exposure without a substantial reduction in visibility or legibility;

(iv) Displayed on a background of contrasting color; and

(v) If a container of a regulated substance is contained within a box or other overpack, the exterior packaging must contain legible and visible information of what regulated substance is contained within.

(2) No person other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. In order to repackage the regulated substances, the importer of record must either:

(i) Expend consumption allowances equal to the amount of allowances that

would be required if each cylinder were full of HFC–23; or

(ii) Verify the contents with independent laboratory testing results and affix a correct label on the container that matches the lab-verified test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.

(3)(i) No person producing, importing, exporting, reclaiming, recycling for fire suppression, or repackaging regulated substances, whether as a single or multicomponent substance, may sell or distribute, or offer for sale or distribution, those regulated substances without first conducting laboratory testing of a representative sample of the regulated substances that they are producing, importing, exporting, reclaiming, recycling for fire suppression, or repackaging to verify that the composition of the regulated substance(s) matches the container labeling using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F for regulated substances offered for sale and distribution as refrigerants and using the following sampling and testing method for regulated substances offered for non-refrigerant uses:

TABLE 1 TO PARAGRAPH (i)(3)(i) NON-REFRIGERANT REGULATED SUBSTANCE SAMPLING AND TESTING METHODS

Regulated substance	Sampling and testing method
HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a	Appendix A to 40 CFR part 82, subpart F, Sections 1, 2, 3, 5.1, 5.2, 5.3, 7, 8; *Part 7 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014—Normative,* (incorporated by reference in § 84.37).[3]
HFC–134a, HFC–143, HFC–245fa, HFC–32, HFC–152	Appendix A to 40 CFR part 82, subpart F, Sections 1, 2, 3, 5.1, 5.2, 5.3, 7, 8; *Part 9 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014—Normative,* (incorporated by reference in § 84.37).[3]
HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, HFC–43–10mee.	Sections 8,[1] 9, 10, 11, 12,[2] and 13 of EPA Method 18 as applicable—appendix A–6 to 40 CFR part 60—Test Methods 16 through 18. Or ASTM D6806–02 (2022), *Standard Practice for Analysis of Halogenated Organic Solvents and Their Admixtures by Gas Chromatography* (incorporated by reference in § 84.37).[4]

[1] Only applicable portions of section 8 as specified here are required. Canisters may be used in place of bags for the purposes of these requirements. A sampling and analysis procedure under section 8.2 which provides for a representative sample is required (while section 8.2.1.5 is likely most appropriate, other procedures may be acceptable). Sections 8.4.1, 8.4.2.1, and 8.4.2.2 are required.

[2] ''Dry basis'' concentrations do not need to be recorded.

[3] ASTM D6064–11 (reapproved 2022), *Standard Specification for HFC–227ea, 1,1,1,2,3,3,3-Heptafluoropropane (CF3CHFCF3)* (incorporated by reference in § 84.37) may be used as an alternative for non-refrigerant regulated substances offered for fire suppression use.

[4] ASTM D6231/D6231M–21, *Standard Specification for HFC–125 (Pentafluoroethane, C2HF5)* (incorporated by reference in § 84.37) and ASTM D6541–21 *Standard Specification for HFC–236fa, 1,1,1,3,3,3-Hexafluoropropane, (CF3CH2CF3),* (incorporated by reference in § 84.37) reference ASTM D6806 and may be used as an alternative for non-refrigerant regulated substances offered for fire suppression use.

(ii) No person may sell or distribute, or offer for sale or distribution, regulated substances, whether as a single or multicomponent substance, as a refrigerant (except if recovered from and recycled for use in motor vehicle air conditioning or motor vehicle air conditioning-like appliances in accordance with 40 CFR part 82, subpart B) that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants, or, if not listed therein, appendix A1 to 40 CFR part 82, subpart F. For persons who are producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances, the applicable specifications must be verified using laboratory testing and the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F.

* * * * *

■ 5. Amend § 84.7 by

■ a. In paragraph (b)(2), removing the text ''303,887,017'' and adding in its place the text ''302,538,316''; and

■ b. Revising the table in paragraph (b)(3).

The revisions read as follows:

§ 84.7 Phasedown schedule.

* * * * *

(b) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)

Year	Total production (MTEVe)	Total consumption (MTEVe)
(i) 2022–2023	344,299,157	273,498,315
(ii) 2024–2028	229,521,263	181,522,990
(iii) 2029–2033	114,760,632	90,761,495
(iv) 2034–2035	76,507,088	60,507,663
(v) 2036 and thereafter	57,380,316	45,380,747

■ 6. Amend § 84.9 by:

■ a. In paragraph (a) introductory text, add ''2022 and 2023'' after the words ''calendar year''; and

■ b. Redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The revision reads as follows:

§ 84.9 Allocation of calendar-year production allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances, the relevant Agency official will issue, through a separate notification, calendar year production allowances to entities that produced a regulated substance in 2021 or 2022, or both 2021 and 2022. The allocation of calendar years 2024, 2025, 2026, 2027, and 2028 production

allowances is calculated as follows for each entity:

(1) Take the average of the three highest annual exchange value-weighted production amounts that each eligible entity reported to the Agency for calendar years 2011 through 2019. If an entity, or commonly owned or controlled group of entities, does not have consumption amounts for three years between calendar years 2011 through 2019, the relevant Agency official will take the average of available year(s) of consumption for calendar years 2011 through 2019;

(2) Sum every entity's average values determined in paragraph (b)(1) of this section and determine each entity's percentage of that total;

(3) Determine the amount of general pool production allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the production cap in § 84.7(b)(3); and

(4) Determine individual entities' production allowance quantities by multiplying each entity's percentage determined in paragraph (b)(2) of this section by the amount of general pool allowances determined in paragraph (b)(3) of this section.

* * * * *

■ 7. Amend § 84.11 by:

■ a. In paragraph (a) introductory text, removing the text ''calendar year'' and adding in its place the text ''calendar years 2022 and 2023'' and removing the word ''importers'' and adding in its place the text ''entities that imported''; and

■ b. Removing paragraph (c), redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§ 84.11 Allocation of calendar-year consumption allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances the relevant Agency official will issue, through a separate notification, calendar year consumption allowances. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 consumption allowances is calculated as follows for each entity:

(1) For new market entrants that were allocated allowances pursuant to § 84.15(e)(3), take the allowances allocated for calendar year 2023 and divide that value by the proportion of calendar year 2023 consumption allowances received by general pool allowance holders pursuant to paragraph (a) of this section relative to their high three average calculated pursuant to paragraph (a)(2) of this section;

(2) For entities that produced or imported a regulated substance in 2021 or 2022, or both 2021 and 2022, and have not been allocated allowances pursuant to § 84.15(e)(3), the relevant Agency official will calculate and issue allowances. This calculation and issuance will be to a single entity if multiple entities with historic consumption data are related through shared corporate or common ownership. The relevant Agency official will take the average of the three highest annual exchange value-weighted consumption amounts, which for entities related through shared corporate or common ownership or control would be aggregated and averaged at the corporate or common ownership level, that each eligible entity reported to the Agency for calendar years 2011 through 2019. If an entity, or commonly owned or controlled group of entities, does not have consumption amounts for three years between calendar years 2011 through 2019, the relevant Agency official will take the average of available year(s) of consumption for calendar years 2011 through 2019;

(3) If an entity has a value calculated under paragraphs (b)(1) and (b)(2) of this section, take the single higher value;

(4) If an entity allocated allowances pursuant to § 84.15(e)(3) was acquired by an entity that has a market share calculable under paragraph (b)(2) of this section, and EPA has approved this acquisition, sum the value calculated under paragraph (b)(1) of this section for the entity allocated allowances pursuant to § 84.15(e)(3) with the value calculated under paragraph (b)(2) of this section disregarding any historic consumption activity by the entity allocated allowances pursuant to § 84.15(e)(3), except this paragraph (b)(4) shall not apply to an entity allocated allowances pursuant to § 84.15(e)(3) that has a higher value calculated under paragraph (b)(2) of this section than under paragraph (b)(1) of this section;

(5) Sum every entity's values as determined in paragraphs (b)(1), (2), (3), and (4) of this section and determine each entity's percentage of that total;

(6) Determine the amount of general pool consumption allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the consumption cap in § 84.7(b)(3); and

(7) Determine individual entities' consumption allowance quantities by multiplying each entity's percentage determined in paragraph (b)(5) of this section by the amount of general pool allowances determined in paragraph (b)(6) of this section.

■ 8. Amend § 84.17 by:

■ a. Revising paragraphs (a)(8) and (9); and

■ b. Adding paragraphs (a)(10) and(11).

The revisions and additions read as follows:

§ 84.17 Availability of additional consumption allowances.

* * * * *

(a) * * *

(8) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of regulated substances shipped and documenting the sale of the regulated substances to the purchaser;

(9) The Harmonized Tariff Schedule codes of the regulated substances exported;

(10) Internal Transaction Numbers for all shipments; and

(11) All international export declaration documentation (*i.e.,* electronic export information), which is electronically filed within AES.

* * * * *

■ 9. Amend § 84.19 by adding paragraph (a)(5) to read as follows:

§ 84.19 Transfers of allowances.

(a) * * *

(5) An entity does not need to follow the procedures in this paragraph (a) to expend allowances possessed by another entity that is majority owned by it, it majority owns, related to it through majority ownership, or commonly owned with it.

* * * * *

■ 10. Amend § 84.25 by revising paragraph (a)(1)(v) to read as follows:

§ 84.25 Required processes to import regulated substances as feedstocks or for destruction.

(a) * * *

(1) * * *

(v) The U.S. port of entry for the import, the expected date of import, and the vessel transporting the material. If at the time of submitting the petition the entity does not know this information, and the entity receives a non-objection notice for the individual shipment in the petition, the entity is required to notify the relevant Agency official of this information prior to the date of importation (consistent with the definition at 19 CFR 101.1) of the individual shipment into the United States;

* * * * *

■ 11. Amend § 84.31 by:

■ a. Revising paragraphs (b)(2)(i) through (iii);

■ b. In paragraph (b)(3)(xi), after the text ''distribution'' adding the text '', including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review'';
■ c. In paragraph (c)(1) introductory text, after the text ''importer of'' adding the text ''record of'';
■ d. In paragraph (c)(2)(xviii), after the text ''distribution'' adding the text '', including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review'';
■ e. In paragraph (c)(3)(i)(D), after the text ''date of importation'' adding the text ''(consistent with the definition at 19 CFR 101.1)'';
■ f. Revising paragraph (c)(7);
■ g. Adding paragraph (c)(9);
■ h. Redesignating paragraph (d)(2) as (d)(3) and adding a new paragraph (d)(2);
■ i. Revising paragraph (i)(4)(i);
■ j. Revising paragraph (j)(3); and
■ k. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The additions and revisions read as follows:

§ 84.31 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their transformation by the producer; for any regulated substance that is used in processes resulting in their transformation at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their destruction by the producer; for any regulated substance that is used in processes resulting in their destruction at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for destruction by a second party;

(iii) The quantity (in kilograms) of production of each regulated substance used as a process agent by the producer; for any regulated substance that is used as a process agent at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for use as a process agent by a second party;

* * * * *

(c) * * *

(7) *Additional reporting for importers of record.* The importer of record must include the following no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation (consistent with the definition at 19 CFR 101.1), via a U.S. Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface (authorized agents may permissibly file on behalf of an importer of record):

(i) Cargo Description;

(ii) Net weight;

(iii) Container number(s) associated with the shipment, as applicable;

(iv) Gross Weight;

(v) Weight Unit of Measure;

(vi) Port of Entry;

(vii) Scheduled Entry Date;

(viii) Harmonized Tariff Schedule (HTS) code;

(ix) Harmonized Tariff Schedule (HTS) Description;

(x) Origin Country;

(xi) Importer of Record Name and Associated Number;

(xii) Consignee Entity Name;

(xiii) CAS Number(s) of the regulated substance(s) imported and, for regulated substances that are in a mixture, either the ASHRAE numerical designation of the refrigerant or the percentage of the mixture containing each regulated substance;

(xiv) If importing regulated substances for transformation or destruction, a copy of the non-objection notice issued consistent with § 84.25;

(xv) If importing regulated substances as a transhipment, a copy of the confirmation documenting the entity reported the transhipment consistent with paragraph (c)(3)(i) of this section; and

(xvi) A certificate of analysis, if the certificate of analysis is not physically accompanying the shipment pursuant to § 84.5(b)(1)(v)).

* * * * *

(9) *Importer of record information.* (i) Any entity that falls under any of the following criteria must submit the information outlined in paragraph (c)(9)(ii) of this section:

(A) That is issued allowances by EPA and anticipates being the importer of record for a shipment of regulated substances; or

(B) That is not issued allowances by EPA, but receives transferred or conferred allowances.

(ii) The following information must be submitted to EPA by the date specified under paragraph (c)(9)(iii) of this section:

(A) Names of all subsidiaries;

(B) Entities commonly owned or majority owned by the same person or persons;

(C) Alternative names under which the entity does business;

(D) Importer of record numbers; and

(E) If providing information under paragraph (c)(9)(ii) (A), (B), or (C) of this section:

(*1*) The relationship between the allowance holder and each subsidiary and each entity commonly owned or majority owned by the same person or persons, including alternative names under which each listed entity does business; and

(*2*) If applicable, the identity of owners and their respective percentage of ownership.

(iii) The information outlined in paragraph (c)(9)(ii) of this section must be submitted each year by:

(A) November 15 after being issued allowances for an entity that falls under paragraph (c)(9)(i)(A) of this section; or

(B) within 15 calendar days of receiving a non-objection notice for conferral of application-specific allowances pursuant to § 84.13(h) or for inter-company transfer of consumption allowances pursuant to § 84.19(a) for an entity that falls under paragraph (c)(9)(i)(B) of this section.

(iv) If changes occur to the information previously provided to the Agency, such changes must be transmitted to the Agency at least 21 days prior to expenditure of allowances pursuant to § 84.5(b)(1)(i).

* * * * *

(d) * * *

(2) *Recordkeeping.* (i) Exporters must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(ii) [Reserved]

* * * * *

(i) * * *

(4) * * *

(i) Reclaimers must maintain records, by batch, of the results of the analysis

conducted to verify that reclaimed regulated substance meets the necessary specifications in appendix A to 40 CFR part 82, subpart F (based on AHRI Standard 700–2016), including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review. Such records must be maintained for five years.

* * * * *

(j) * * *

(3) *Recordkeeping.* (i) Recyclers must maintain records of the names and addresses of persons sending them material for recycling and the quantity of the material (the combined mass of regulated substance and contaminants) by regulated substance sent to them for recycling. Such records must be maintained on a transactional basis for five years.

(ii) Recyclers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(k) *Repackagers.* Persons who transfer regulated substances, either alone or in a blend from one container to another container prior to sale or distribution or offer for sale or distribution must comply with the following recordkeeping requirements:

(1) *Recordkeeping.* Repackagers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, audit trail files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(2) [Reserved]

■ 12. Add § 84.37 to read as follows:

§ 84.37 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at EPA and at the National Archives and Records Administration (NARA). Contact EPA at: U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC, 202–566–1742. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material also may be obtained from the following sources.

(a) Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Boulevard, Suite 400, Arlington, VA 22201; *phone:* 703.524.8800; website: *www.ahrinet.org.*

(1) 2008 Appendix C to AHRI Standard 700–2014, 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014—Normative, copyright 2008; into § 84.5(i).

(2) [Reserved]

(b) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428; phone: 610.832.9500; email: *service@astm.org;* website: *www.astm.org/.*

(1) ASTM D6064–11 (reapproved 2022), Standard Specification for HFC–227ea, 1,1,1,2,3,3,3-Heptafluoropropane (CF_3CHFCF_3), approved November 1, 2022; IBR approved for § 84.5(i).

(2) ASTM D6231/D6231M–21, Standard Specification for HFC–125 (Pentafluoroethane, C2HF5), approved June 1, 2021; IBR approved for § 84.5(i).

(3) ASTM D6541–21, Standard Specification for HFC–236fa, 1,1,1,3,3,3–Hexafluoropropane, (CF3CH2CF3), approved June 1, 2021; IBR approved for § 84.5(i).

(4) ASTM D6806–02 (reapproved 2022), Standard Practice for Analysis of Halogenated Organic Solvents and Their Admixtures by Gas Chromatography, approved May 1, 2022; IBR approved for § 84.5(i).

■ 13. Effective October 1, 2024, amend § 84.37 by adding paragraphs (a)(2) and (3) and (c) to read as follows:

§ 84.37 Incorporation by Reference.

* * * * *

(a) * * *

(2) AHRI RTL OM December 2019, Refrigerant Testing Laboratory Certification Program Operations Manual, copyright 2019; IBR approved for § 84.3.

(3) AHRI General OM—January 2023, General Operations Manual, copyright 2022; IBR approved for § 84.3.

* * * * *

(c) International Organization for Standardization (ISO), Chemin de Blandonnet 8, CP 401—1214 Vernier, Geneva, Switzerland; tel.: + 41 22 749 01 11; fax: + 41 22 733 34 30; email: *central@iso.org;* website: *www.iso.org.*

(1) ISO/IEC 17025:2017(E), ''General requirements for the competence of testing and calibration laboratories'', Third Edition, published November 2017; IBR approved for § 84.3.

(2) [Reserved]

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Defense Acquisition Regulations System

48 CFR Parts 202, 212, 225, et al.

Defense Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2020–0036]

RIN 0750–AL03

Defense Federal Acquisition Regulation Supplement: Source Restrictions on Auxiliary Ship Components (DFARS Case 2020–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires certain auxiliary ship components to be procured from a manufacturer in the national technology and industrial base.

DATES: Effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 85 FR 60943 on September 29, 2020, and a correction at 85 FR 65787 on October 16, 2020, to amend the DFARS to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 853 amends 10 U.S.C. 2534 (now 10 U.S.C. 4864), Miscellaneous Limitations on the Procurement of Goods Other than United States Goods, by establishing a limitation on the procurement of large medium-speed diesel engines for contracts awarded for new construction of an auxiliary ship, which requires the engines to be manufactured in the national technology and industrial base. The national technology and industrial base is defined at 10 U.S.C. 4801(1) to include the United States, Australia, Canada, New Zealand, and the United Kingdom. Section 853 also added paragraph (k) to clarify that the term auxiliary ship does not include an icebreaker or a special mission ship.

All references to 10 U.S.C. 2534 in this final rule preamble and DFARS text are updated to 10 U.S.C. 4864 to reflect the title 10 transfer accomplished by the final rule for DFARS Case 2022–D018, Reorganization of Defense Acquisition Statutes, published at 87 FR 76988 and effective December 30, 2022.

One respondent submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Changes are made to DFARS 225.7001, Definitions, and to the contract clause at 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, to add a definition for large medium-speed diesel engines. Additional changes are made to the clause at 252.225–7062 to (1) designate the paragraph that includes the 10 U.S.C. 4864 limitation as paragraph (b), Restrictions; and (2) add the requirement to include the substance of the clause in all subcontracts that exceed the simplified acquisition threshold (SAT), including contracts for the acquisition of commercial products and commercial services that require large medium-speed diesel engines for new construction of auxiliary ships.

DFARS 212.503(a)(vii) adds 10 U.S.C. 4864 to the list of laws that are not applicable to contracts for the acquisition of commercial products and commercial services, and states that 10 U.S.C. 4864 does not apply to contracts valued at or below the SAT. At DFARS 212.504(a)(xii) clarifying language is added to state that the limitation at 10 U.S.C. 4864 does not apply to subcontracts for commercial products and commercial services valued at or below the SAT. At DFARS 212.504(b), paragraph (iii) adds 10 U.S.C. 4864 to the list of laws that have been eliminated for subcontracts at any tier for the acquisition of commercial products, commercial services, or commercial components and clarifies that the statute does not apply to subcontracts valued at or below the SAT.

B. Analysis of Public Comments

1. Support for the Rule

Comment: The respondent expressed support for the rule and the determination that it is in the best interest of the Government to apply the new DFARS clause to contracts and subcontracts for commercial items, including commercial off-the-shelf (COTS) items. The respondent further stated that excluding the new rule from application to contracts and subcontracts for commercial items would create a loophole that would undermine the overarching intent of the statute and purpose of the rule to restrict the purchase of large medium-speed diesel engines for auxiliary ships, unless the engines are manufactured in the national technology and industrial base.

Response: DoD acknowledges the respondent's support for the rule.

2. Clarifying Definition for ''Large Medium-Speed Diesel Engines''

Comment: The respondent recommended revising the definition for large medium-speed diesel engines with the addition of the following for clarity: A ''medium-speed diesel engine'' operates between 400 and 1200 rotations per minute (RPM). ''Large'' refers to the brake horsepower (bHP) delivered starting at a minimum of 5,000 bHP (~3.75 MW).

Response: DoD concurs with the need for clarity concerning the definition of ''large medium-speed diesel engine''. Accordingly, large medium-speed diesel engines are defined as diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder. DoD considers medium-speed diesel engines to fall within the range of 300 to 1500 RPMs based on purchasing experience and market research. Regarding the definition of ''large'', DoD considers displacement, *i.e.,* how much volume can be pumped through the engine, as the appropriate factor for engine size as opposed to brake horsepower that measures the power of the engine. Based on this analysis, DoD determines that large marine diesel engines have a displacement of 1500 cubic inches per cylinder or more.

The following new definition for large medium-speed diesel engines is added at DFARS 225.7001, Definitions, and to the clause at 252.225–7062: ''Large medium-speed diesel engines means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.''

3. Recommended Clarification to DFARS 212.504(a)

Comment: The respondent recommended a minor clarifying revision to DFARS 212.504(a) to reflect the determination that the proposed new clause at DFARS 252.225–70XX should apply to commercial item subcontracts. The respondent stated that currently, DFARS 212.504(a) lists

statutory provisions that are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components. The respondent further stated that currently included in that list of statutory provisions at DFARS 212.504(a), is 10 U.S.C. 2534, the statute that implements section 853. While the proposed rule stated the intent to apply the new DFARS 252.225–70XX clause to commercial item subcontracts at all tiers, leaving DFARS 212.504(a) as currently drafted may create confusion as to whether subcontracts for commercial item large medium-speed diesel engines are subject to the restriction imposed by the rule.

The respondent recommended a conforming edit to DFARS 212.504(a) to apply the new restriction imposed by 10 U.S.C. 2534 for large medium-speed diesel engines to commercial item subcontracts. The respondent further recommended additional revisions to remove 10 U.S.C. 2534 from its listing under DFARS 212.504(a) and add as a new listing under DFARS 212.504(b).

Response: DoD acknowledges the omission and concurs with revising DFARS 212.504(a) to clarify the application of the new restriction imposed by 10 U.S.C. 4864 to commercial product, commercial service, and commercial component subcontracts that exceed the SAT, and therefore include an additional reference at 212.504(b)(iii). Related conforming changes are also made to DFARS 212.503. Accordingly, DoD has revised the following:

1. DFARS 212.503(a)(vii)—added 10 U.S.C. 4864 to the list of laws that are not applicable to contracts for the acquisition of commercial products and commercial services, and that 10 U.S.C. 4864 does not apply to contracts valued at or below the SAT.

2. DFARS 212.504(a)(xii)—added to the existing 10 U.S.C. 4864 reference the statement that the limitation does not apply to subcontracts for commercial products, commercial services, or commercial components valued at or below the SAT; and

3. DFARS 212.504(b)—added paragraph (iii) to state that 10 U.S.C. 4864 does not apply to subcontracts for commercial products, commercial services, or commercial components valued at or below the SAT.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Commercial Services, and Commercially Available Off-the-Shelf (COTS) Items

This rule creates a new DFARS clause, 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines. Section 853 amends 10 U.S.C. 4864(a) to provide a limitation on components for auxiliary ships. 10 U.S.C. 4864 does not apply to a contract or subcontract for an amount that does not exceed the SAT (see paragraph (g)). Therefore, DoD will not apply this clause to acquisitions at or below the SAT. However, DoD is applying this clause to contracts for the acquisition of commercial products, commercial services, and COTS items.

A. Applicability to Contracts for the Acquisition of Commercial Products, Commercial Services, and COTS Items

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 (previously 10 U.S.C. 2533a) or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863 (previously 10 U.S.C. 2533b); or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

B. Determination

Section 853 of the NDAA for FY 2020 does not apply to contracts at or below the SAT and is silent on applicability to contracts and subcontracts for the acquisition of commercial products and commercial services. Also, the statute does not provide for civil or criminal penalties. Therefore, it does not apply to contracts or subcontracts for the acquisition of commercial products and commercial services unless a written determination is made. Due to delegations of authority, the Principal Director, Defense Pricing and Contracting is the appropriate authority to make this determination.

DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items, as defined at Federal Acquisition Regulation (FAR) 2.101. Not applying this rule to contracts and subcontracts for such acquisitions would exclude contracts intended to be covered by this rule and undermine the overarching purpose for the rule to restrict the purchase of large medium-speed diesel engines for auxiliary ships, unless the engines are manufactured in the national technology and industrial base, which is defined at 10 U.S.C. 4801(1).

IV. Expected Impact of the Rule

This rule does not propose to add any new burden on the public. It amends DFARS 225.7010, Restriction on certain naval vessel components, and adds the contract clause 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, with flowdown to subcontractors to include additional limitations on large medium-speed diesel engines for auxiliary ships for contracts awarded by the Secretary of a military department for new construction of an auxiliary ship using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

The domestic source restriction does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold;

(2) The acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States; and

(3) Large medium-speed diesel engines for icebreakers or special mission ships.

Contracting officers will include the clause in solicitations and contracts that exceed the SAT, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items, that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy, unless a waiver is granted or an exception applies.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

The final rule is necessary to revise the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statute that requires certain auxiliary ship components to be procured from a manufacturer in the national technology and industrial base, subject to exceptions. The national technology and industrial base is defined at 10 U.S.C. 4801(1) and currently includes the United States, Australia, Canada, New Zealand, and the United Kingdom of Great Britain and Northern Ireland.

The objective of the rule is to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, which amends 10 U.S.C. 2534 (now 10 U.S.C. 4864), Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, that establishes limitations on auxiliary ship components for contracts awarded for new construction of an auxiliary ship unless the components are manufactured in the national technology and industrial base. The rule includes additional limitations on large medium-speed diesel engines for auxiliary ships for contracts awarded by the Secretary of a military department for new construction of an auxiliary ship using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD reviewed data from the Federal Procurement Data System (FPDS) for FY 2017, 2018, and 2019 excluding (1) contracts or subcontracts that do not exceed the simplified acquisition threshold, (2) acquisitions of spare or repair parts needed to support naval vessels manufactured outside the United States, and (3) large medium-speed diesel engines specifically for icebreakers or special mission ships. The review of the FPDS data revealed that there was a total of 241 awards, of which 121 were made to small businesses, a median of 50 percent awarded to small entities during those three fiscal years.

It is expected that this rule will benefit small businesses. The rule will provide small businesses the opportunity to participate in the manufacture of auxiliary ship components in support of the national technology and industrial base.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

DoD has not identified any alternative approaches to the rule that would meet the requirements of the statute.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND SERVICES

■ 2. Amend section 212.301 by adding paragraph (f)(ix)(NN) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ix) * * *

(NN) Use the clause at 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, as prescribed in 225.7010–5, to comply with 10 U.S.C. 4864.

* * * * *

■ 3. Amend section 212.503 by—

■ a. Redesignating paragraphs (a)(vii) and (viii) as paragraphs (a)(viii) and (ix), respectively; and

■ b. Adding new paragraph (a)(vii).

The addition reads as follows:

212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

(a) * * *

(vii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to contracts valued at or below the simplified acquisition threshold.

* * * * *

■ 4. Amend section 212.504 by revising paragraph (a)(xii) and adding paragraph (b)(iii) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

(a) * * *

(xii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts valued at or below the simplified acquisition threshold.

* * * * *

(b) * * *

(iii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts at any tier valued at or below the simplified acquisition threshold.

PART 225—FOREIGN ACQUISITION

■ 5. Amend section 225.7001 by adding, in alphabetical order, the definition of ''Large medium-speed diesel engines'' to read as follows:

225.7001 Definitions.

* * * * *

Large medium-speed diesel engines means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

* * * * *

■ 6. Revise section 225.7010 to read as follows:

225.7010 Restrictions on certain naval vessel and auxiliary ship components.

■ 7. Revise section 225.7010–1 to read as follows:

225.7010–1 Restrictions.

In accordance with 10 U.S.C. 4864, unless manufactured in the United States, Australia, Canada, or the United Kingdom, do not acquire:

(a) The following components of naval vessels to the extent they are unique to marine applications:

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Pumps.

(5) Propulsion and machinery control systems.

(6) Totally enclosed lifeboats.

(b) Large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

■ 8. Revise section 225.7010–2 to read as follows:

225.7010–2 Exceptions.

(a) The restriction at 225.7010–1(a) does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or

(2) Acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, or totally enclosed lifeboats, when those from alternate sources are not interchangeable.

(b) The restriction at 225.7010–1(b) does not apply to—

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or

(2) Large medium-speed diesel engines for icebreakers or special mission ships.

■ 9. Revise section 225.7010–3 to read as follows:

225.7010–3 Waiver.

The waiver criteria at 225.7008 apply to the restrictions at 225.7010–1.

■ 10. Amend section 225.7010–4—

■ a. By revising the section heading; and

■ b. In paragraphs (a) and (b) by removing ''this restriction'' and adding ''the restriction at 225.7010–1(a)'' in its place.

The revision reads as follows:

225.7010–4 Implementation of restriction on certain naval vessel components.

* * * * *

■ 11. Add section 225.7010–5 to read as follows:

225.7010–5 Contract clause.

Use the clause at 252.225–7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts that exceed the simplified acquisition threshold, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless—

(a) An exception at 225.7010–2(b)(2) applies; or

(b) A waiver has been granted.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Add section 252.225–7062 to read as follows:

252.225–7062 Restriction on Acquisition of Large Medium-Speed Diesel Engines.

As prescribed in 225.7010–5, use the following clause:

Restriction on Acuisition of Large Medium-Speed Diesel Engines (Jul 2023)

(a) *Definition.* As used in this clause—

Large medium-speed diesel engines means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

(b) *Restriction.* As required by 10 U.S.C. 4864, the Contractor shall deliver under this contract large medium-speed diesel engines manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services, that require large medium-speed diesel engines for new construction of auxiliary ships.

(End of clause)

[FR Doc. 2023–15153 Filed 7–19–23; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 202 and 234

[Docket DARS–2023–0025]

RIN 0750–AL89

Defense Federal Acquisition Regulation Supplement: Repeal of Major Automated Information Systems Provisions (DFARS Case 2017–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that repealed major automated information systems provisions.

DATES: Effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

Section 846 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328) repealed 10 U.S.C. chapter 144A and amended 10 U.S.C. 2334(a)(2) (now 10 U.S.C. 3221(b)(2)) by striking ''or a major automated information system under chapter 144A''. This final rule amends the definition of ''milestone decision authority'' in section 202.101, Definitions, by removing the term major automated information system and removes major automated information system programs from section 234.7100, Policy, and the clause prescription at 234.7101, Solicitation Provision and Contract Clause.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment

if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule merely removes references to major automated information system programs from DFARS policy and procedures for DoD contracting officers; therefore, there is no impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202 and 234

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 234 are amended as follows:

■ 1. The authority citation for parts 202 and 234 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Amend section 202.101 in the definition of ''Milestone decision authority'' by removing '', major automated information system,''.

PART 234—MAJOR SYSTEM ACQUISITION

234.7100 [Amended]

■ 3. Amend section 234.7100 in paragraph (a) by removing '', and major automated information system programs (as defined in 10 U.S.C. 2445a)''.

234.7101 [Amended]

■ 4. Amend section 234.7101 in paragraph (b) introductory text and paragraphs (b)(1) and (2) by removing ''or major automated information system programs''.

[FR Doc. 2023–15152 Filed 7–19–23; 8:45 am]

BILLING CODE5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2023–0003]

RIN 0750–AL60

Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Personal Protective Equipment and Certain Items From Non-Allied Foreign Nations (DFARS Case 2022–D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2022 that restricts the acquisition of personal protective equipment and certain other items from the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

DATES: Effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 88 FR 6600 on January 31, 2023, to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81) (10 U.S.C. 2533e) and section 881 of the NDAA for FY 2023 (Pub. L. 117–263). Section 802 adds the restriction to 10 U.S.C. 2533e (transferred to 10 U.S.C. 4875) that limits the acquisition of covered items (personal protective equipment and certain other items) from any of the following covered countries, subject to exceptions: the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

There were no public comments submitted in response to the interim rule. Minor changes are made throughout the rule to remove references to section 802 of the NDAA for FY 2022. Those references are unnecessary, because section 802 has

been codified at 10 U.S.C. 4875, which is referenced in the rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and Commercial Services

The clause at DFARS 252.225–7061, Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations, is prescribed at DFARS 225.7023–4 for use in solicitations and contracts with an estimated value above $150,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services, that are for the acquisition of covered items for use within the United States. Consistent with the determination that DoD made with regard to the application of the requirements of section 802 of the NDAA for FY 2022, DFARS clause 252.225–7061 applies to acquisitions above $150,000 and to contracts for the acquisition of commercial products, including COTS items, and commercial services.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This final rule is necessary to finalize an interim rule that revised the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81) (10 U.S.C. 2533e, transferred to 10 U.S.C. 4875). Section 802 restricts the acquisition of a covered item, defined as an article or item of personal protective equipment for use in preventing the spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, or other items for sanitizing and disinfecting, testing, gauze, and bandages, from The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or The Islamic Republic of Iran. The objective of the rule is to finalize the implementation of section 802 of the NDAA for FY 2022.

There were no public comments received in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System for FY 2019, 2020, and 2021, DoD awarded an average of 1,677 contracts in the United States that equaled or exceeded $150,000 in value and were for the acquisition of medical, dental, or veterinary equipment and supplies (excluding covered items for use outside the United States). These contracts were awarded to 192 unique entities, of which 105 were small entities. It is not known what percentage of these awards might involve personal protective equipment and other materials and components from the Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or the Islamic Republic of Iran.

There are no projected reporting or recordkeeping requirements. However, there may be minor compliance costs to validate with suppliers the origin of covered items, materials, and components.

In accordance with section 802, DoD is excepting acquisitions—

- Equal to or less than $150,000;
- For covered items for use outside the United States; and
- If a covered item of satisfactory quality and quantity is not available in the required form from nations other than The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, or the Islamic Republic of Iran.

DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 88 FR 6600 on January 31, 2023, is adopted as final with the following changes.

■ 1. The authority citation for parts 212 and 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.301 [Amended]

■ 2. Amend section 212.301 in paragraph (f)(ix)(MM) by removing ''section 802 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) (10 U.S.C. 4875)'' and adding ''10 U.S.C. 4875'' in its place.

PART 225—FOREIGN ACQUISITION

■ 3. Revise section 225.7023–2 to read as follows:

225.7023–2 Restriction.

Except as provided in 225.7023–3, do not acquire a covered item from a covered country in accordance with 10 U.S.C. 4875.

[FR Doc. 2023–15154 Filed 7–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2023–0026]

RIN 0750–AL78

Defense Federal Acquisition Regulation Supplement: Modification to the National Technology and Industrial Base (DFARS Case 2023–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that adds New Zealand to the definition of the national technology and industrial base.

DATES: Effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 851 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263), which adds New Zealand to the definition of the national technology and industrial base at 10 U.S.C. 4801. The definition already includes the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada as the countries within which the activities of the national technology and industrial base are conducted. 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base.

This final rule modifies several sections in DFARS subpart 225.70, which implement the restrictions of 10 U.S.C. 4864, to add New Zealand to the list of countries from which certain items may be purchased. The rule also adds New Zealand to the countries listed in the solicitation provision at DFARS 252.225–7037, Evaluation of Offers for Air Circuit Breakers, and the contract clause at DFARS 252.225–7038, Restriction on Acquisition of Air Circuit Breakers.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule implements the section 851 changes to 10 U.S.C. 4801(1) by merely adding New Zealand to the list of countries that includes the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada as the countries within which the activities of the national technology and industrial base are conducted. This change does not have a significant effect beyond the internal operating procedures of the Government and does not have a significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This final rule modifies one existing solicitation provision (DFARS 252.225–7037) and one existing contract clause (DFARS 252.225–7038), which relate to implementation of the limitations of 10 U.S.C. 4864 with regard to acquisition of air circuit breakers. This rule does not implement any new requirements, but adds New Zealand as a country from which items restricted by 10 U.S.C. 4864 may be purchased. It does not modify the applicability of the provision and clause to the acquisition of commercial services, and commercial products, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7004–1 to read as follows:

225.7004–1 Restriction.

In accordance with 10 U.S.C. 4864, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured

in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom).

■ 3. Amend section 225.7004–3—

■ a. By revising paragraph (a);

■ b. In paragraph (b) by removing ''Canada,'' and ''Kingdommay'' and adding ''Canada, New Zealand,'' and ''Kingdom may'' in their places, respectively; and

■ c. In paragraph (c) by removing ''Canada,'' and adding ''Canada, New Zealand,'' in its place.

The revision reads as follows:

225.7004–3 Exceptions.

* * * * *

(a) Buses manufactured outside the United States, Australia, Canada, New Zealand, or the United Kingdom are needed for temporary use because buses manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

* * * * *

225.7006–1 [Amended]

■ 4. Amend section 225.7006–1 by removing ''Canada'' and adding ''Canada, New Zealand,'' in its place.

225.7008 [Amended]

■ 5. Amend section 225.7008—

■ a. In paragraphs (b)(2) and (3) by removing ''or Canada,'' and adding ''Canada, New Zealand,'' in its place; and

■ b. In paragraph (c) by removing ''Canadian,'' wherever it appears and adding ''Canadian, New Zealand,'' in its place.

225.7010–1 [Amended]

■ 6. Amend section 225.7010–1 introductory text by removing ''Canada,'' and adding ''Canada, New Zealand,'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7037 [Amended]

■ 7. Amend section 252.225–7037—

■ a. By removing the clause date of ''(DEC 2018)'' and adding ''(JUL 2023)'' in its place;

■ b. In paragraph (a) by removing ''Canada, or the United Kingdom'' and adding ''Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom)'' in its place; and

■ c. In paragraph (b) by removing ''itsoutlying areas, Australia, Canada,'' and adding ''its outlying areas, Australia, Canada, New Zealand,'' in its place.

252.225–7038 [Amended]

■ 8. Amend section 252.225–7038—

■ a. By removing the clause date of ''(DEC 2018)'' and adding ''(JUL 2023)'' in its place; and

■ b. In the clause text by removing ''Canada, or the United Kingdom'' and adding ''Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland'' in its place.

[FR Doc. 2023–15155 Filed 7–19–23; 8:45 am]

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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 Cactus Ferruginous Pygmy-Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0098; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF25

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Cactus Ferruginous Pygmy-Owl

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 cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), a bird subspecies found in Mexico, southern Arizona, and southern Texas. This rule adds the subspecies to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of this subspecies. We concluded that designation of critical habitat is prudent and determinable at this time. Critical habitat will be proposed in a separate rule-making.

DATES: This rule is effective August 21, 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–2021–0098.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 9828 N 31st Ave., Phoenix, AZ 85051; telephone 602–242–0210. 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, subspecies, or distinct vertebrate population segment 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 within 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 cactus ferruginous pygmy-owl meets the definition of a threatened subspecies; therefore, we are listing it as such. We have determined that the designation of critical habitat for the cactus ferruginous pygmy-owl is prudent and determinable, and we will propose designation in a separate rule. Listing a species as an endangered or threatened 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 rule lists the cactus ferruginous pygmy-owl as a threatened subspecies under the Act and adds it to the List of Endangered and Threatened Wildlife. This rule also finalizes a rule issued under section 4(d) of the Act (hereafter, referred to as a ''4(d) rule'').

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 threats to the cactus ferruginous pygmy-owl include: (1) Habitat loss and fragmentation from urbanization, invasive species, and agricultural or forest production; and (2) climate change (effects from current and future changes in climate) and climate conditions (effects from current and past climate), resulting in hotter, more arid conditions throughout much of the subspecies' geographic range. The 4(d) rule would generally prohibit the same activities as prohibited for an endangered species but would allow exemptions for specific types of education and outreach activities already permitted under a Migratory Bird Treaty Act permit, surveying and monitoring conducted in Arizona under a state scientific activity permit issued by the state, and habitat restoration and enhancement activities that improve habitat conditions for the cactus ferruginous pygmy-owl.

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. As stated in the proposed listing rule (86 FR 72547, December 22, 2021), we have determined that the designation of critical habitat for the cactus ferruginous pygmy-owl is prudent and will be proposed in a separate rule.

Previous Federal Actions

As described in Previous Federal Actions of our proposed listing rule for the cactus ferruginous pygmy-owl (86 FR 72547, December 22, 2021), we received a petition dated March 15, 2007, from the Center for Biological Diversity and Defenders of Wildlife (CBD, DOW; petitioners) requesting that we list the cactus ferruginous pygmy-owl as an endangered or threatened species under the Act (CBD and DOW 2007, entire). On October 5, 2011, we published in the **Federal Register** (76 FR 61856) a 12-month finding on the petition to list the pygmy-owl as endangered or threatened. Using the currently accepted taxonomic classification of the pygmy-owl (*Glaucidium brasilianum cactorum*), we found that listing the pygmy-owl was not warranted throughout all or a significant portion of its range, including the petitioned and other potential distinct population segment (DPS) configurations. We were litigated on this decision (Case 4:12–cv–00627–CKJ), and the court found in favor of the

plaintiffs and remanded the 2011 12-month finding on the 2007 petition to list the pygmy-owl (Case 4:14–cv–02506–RM). Under a court settlement, we developed a new 12-month finding and published our proposed rule to list the pygmy-owl on December 22, 2021 (86 FR 72547).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the cactus ferruginous pygmy-owl. The SSA team was composed of Service biologists, in consultation with other species and subject-matter experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the subspecies, including the impacts of past, present, and future factors (both negative and beneficial) affecting the subspecies.

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 solicited independent scientific review of the information contained in the SSA report. As discussed in the proposed rule, we sent the SSA report to five independent peer reviewers and received three responses. The peer reviews can be found at *https://regulations.gov.* We also sent the SSA report to 13 partners, including Tribes and scientists with expertise in land management, pygmy-owl and raptor ecology, and climate science, for review. We received review from 11 partners, including State and Federal agencies, universities, and nonprofit organizations. 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.

Summary of Changes From the Proposed Rule

Since the publication of the December 22, 2021, proposed rule to list the cactus ferruginous pygmy-owl as threatened with a 4(d) rule (86 FR 72547), we have made the following changes:

(1) Per requests from commenters, we have revised the provisions of the 4(d) rule. We updated and clarified our description of the habitat restoration and enhancement exception to clarify that this exception does not include vegetation management along roadways or fuels management that includes the removal of trees and large shrubs. We also provided additional clarity and guidance on what types of projects would be excepted under the 4(d) rule and which would require coordination with and approval from the Service. These changes included additional clarification regarding conditions under which prescribed fire may be excepted under the 4(d) rule and specific guidance on how to coordinate with us prior to habitat restoration and enhancement projects to ensure that projects qualify for exception under the 4(d) rule.

(2) In the preamble, we now include a more detailed discussion of the DPS analysis we undertook, including a description of any pertinent new information we have received since our 2011 12-month finding (76 FR 61856, October 5, 2011).

(3) Based upon new reports we received from the Arizona Game and Fish Department during the comment period, we updated the biological information for the subspecies related to surveys, distribution, occupancy, and genetic differentiation (AGFD 2021b, pers. comm.; Cobbold et al. 2021, entire; Cobbold et al. 2022a, entire; Cobbold et al. 2022b, entire). This information did not alter any significant findings in the proposed rule.

(4) A number of commenters provided us with additional references to consider as we finalized this rule. We considered these references and other references we found while responding to public comments and have incorporated them and any associated information in the final rule and SSA report as appropriate. See the Summary of New Information Since the 2011 12-Month Finding section below for an explanation of where these new references are included in issues relevant to our finding and determination.

(5) We added a summary of the new information and changes that have occurred since our 2011 12-month finding to clarify the factors that contributed to a different determination in this final listing rule. This summary is found in Summary of New Information Since the 2011 12-Month Finding, below.

(6) In response to a comment received during the public comment period, we completed additional analysis on the effects of certain land uses in Texas and Arizona over the past decade (2010–2020) on pygmy-owl habitat using additional sources of information to the source used by the commenter. This further analysis can be found in appendix 6 of the SSA report (Service 2022a, appendix 6).

Summary of New Information Since the 2011 12-Month Finding

This final listing rule results in a different finding than our 2011 12-month finding. This change in finding is based on an additional decade of threats and land-use changes, as well as climate change, acting on the landscape within the range of the pygmy-owl. We also used a different approach in assessing the status of the pygmy-owl throughout its range. We developed a species status assessment for the pygmy-owl using the best available information and a team of experts, including subject-matter experts, representing a range of agencies, Tribal entities, and conservation partners, supported by new spatial data and modeling developed subsequent to our 2011 12-month finding (76 FR 61856, October 5, 2011). Below we summarize the new information available since 2011 upon which our 2021 proposed listing rule (86 FR 72547, December 22, 2021) was based. We have also updated our discussion of the DPS finding to include information subsequent to our 2011 12-month finding (see *Distinct Vertebrate Population Segment,* below).

Taxonomic Classification

Additional genetic sampling was conducted in Mexico by the Arizona Game and Fish Department (AGFD) (Cobbold et al. 2022b, entire). While these additional data add to the baseline information we used to evaluate the status of the pygmy-owl, these results did not change our finding that we lack sufficient information to adopt the proposed taxonomic classification (change taxonomic classification to *Glaucidium ridgwayi cactorum* with associated change in distribution) described by Proudfoot et al. (2006a, entire; 2006b, entire) and discussed in the 2011 12-month finding (76 FR 61856, October 5, 2011). Therefore, no change to the taxonomic classification of the pygmy-owl has occurred since our 2011 12-month finding.

Rangewide Distribution

The taxonomic classification of the pygmy-owl did not change; thus, the general geographic distribution of the pygmy-owl did not change and is the same as described in the 2011 12-month finding (76 FR 61856, October 5, 2011). However, the analysis in our current finding divided the overall range of the pygmy-owl into five separate analysis units. Using this smaller scale analysis, we were able to discuss the condition of pygmy-owl populations and their habitat within each analysis unit, which is a finer resolution analysis than we

used in 2011. This more detailed analysis can be found in the SSA report (Service 2022a, entire), which includes a detailed description of each analysis unit. We also accessed additional pygmy-owl locations across the range of the pygmy-owl that we did not use in 2011 via the Global Biodiversity Information Facility, which included location data from such sources as eBird, iNaturalist, and museum specimens (GBIF 2020, unpaginated).

Climate Change

The decade that passed between our 2011 12-month finding (76 FR 61856, October 5, 2011) and our proposed listing rule (86 FR 72547, December 22, 2021) has been characterized by ongoing climate impacts to pygmy-owl populations and their habitats (Bagne and Finch 2012, entire; Coe et al. 2012, entire; Jiang and Yang 2012, entire; Romero-Lankao, et al. 2014, p. 1443; Melillo et al. 2014, entire; USGCRP 2018, chapters 23 and 25). Impacts resulting from climate change such as ongoing drought (habitat and prey impacts), increased temperatures (decreased productivity), reduced vegetation health and associated impacts to pygmy-owl prey availability, and increased fire occurrence (habitat and prey impacts) have resulted in negative effects to pygmy-owl abundance and distribution, as well as in loss of habitat and increased habitat fragmentation (Melillo et al. 2014, entire; Vermote et al. 2014, unpaginated; Cook et al. 2015, p. 6; Easterling et al. 2017, pp. 207–230; USGCRP 2018, chapters 23 and 25; Gonzalez et al. 2018, entire; Breshears et al. 2018, p. 1; Williams et al. 2020, p. 317, IPCC 2022, entire).

Enough time has passed since the early predictions of impacts of climate change that we have seen evidence of those predicted impacts on vegetation communities across the range of the pygmy-owl. Generally, these impacts have been in line with or worse than what was predicted. New climate models and projections and updated information in general were available for our analysis. These projections continue to predict impacts at the same or increasing levels upon the landscape in areas where the pygmy-owl occurs. This information is discussed in greater detail in *Climate Change and Climate Conditions,* below. Additionally, we included climate scientists in our peer and partner review of the climate section of the pygmy-owl SSA report, and they provided input and updated citations regarding our discussion of climate effects that are included in the SSA report and this final listing rule.

Rangewide Habitat Loss

With the exception of climate change, there is not a single threat leading to habitat loss across the range of the pygmy-owl. However, habitat loss is occurring across every portion of the range of the pygmy-owl. Each of the five analysis units is experiencing varying degrees of pygmy-owl habitat loss that, when considered together, result in rangewide habitat loss (Thomas et al. 2012, p. 43; Lyons et al. 2013, p. 8; Vo 2013, unpaginated; TDC 2019, entire; Texas Land Trends 2019, entire; Wied et al. 2020, entire; Mesa-Sierra et al. 2022, unpaginated; Burquez 2022, pers. comm.). The 2011 12-month finding did not assess local habitat impacts at the level of individual analysis units. These more specific descriptions of threats and impacts by analysis unit can be found in the SSA report (Service 2022a, appendix 5) and in *Summary of Current Condition of the Subspecies,* below.

Status in Arizona

As in 2011, pygmy-owls continue to be absent from Pinal County and around Tucson where they were found as recently as the early 2000s (Ingraldi 2020, pers. comm.). Additionally, based on survey efforts in 2020 and 2021, pygmy-owls can no longer be found reliably in Organ Pipe Cactus National Monument for the first time since records have been kept (Ingraldi 2020, pers. comm.; AGFD 2021b, pers. comm.). Personal communication with Tribal staff indicates that pygmy-owls continue to be found on the Tohono O'odham Nation, although comprehensive surveys have not been conducted and information on specific locations of pygmy-owls is not released by the Tohono O'odham Nation (Verwys 2020 and 2021, pers. comm.). Currently, the known abundance of owls is higher in Altar Valley than it was in 2011, likely due to increased survey and monitoring under the Pima County Multi-Species Conservation Plan and by the AGFD (Flesch 2018a, entire; Ingraldi 2020, pers. comm.; PCOSC 2021, entire). However, occupancy in the Altar Valley appears to be down in 2022, potentially in response to the dry winter of 2021–2022 and ongoing drought conditions (AGFD 2022, unpublished data; Service 2022b, unpublished data; NDMC 2022, unpaginated).

Threats related to climate change have increased, including fire (Inciweb 2022, unpaginated), invasive species, degraded vegetation condition, and reduced prey availability due to drought and impacted hydrology including the loss of surface and ground water (BOR 2021, entire; NDMC 2022, unpaginated). Development continues to impact habitat particularly in areas of northwest Tucson and Pinal County. While there is not a direct correlation between acres of pygmy-owl habitat lost and human population growth, it is reasonable to find that, as human population grows, the amount of native habitat lost or fragmented will increase. We looked at recent population growth and projections in Arizona as an indication for future urbanization (OEO 2018, unpaginated; U.S. Census Bureau 2021a, unpaginated; EBRC 2021, unpaginated). New, taller border walls have been constructed along all border areas occupied by pygmy-owls in Arizona (DHS 2020, unpaginated). As discussed in the SSA report, the impacts of this border infrastructure on pygmy-owls have not been studied but represent a potential barrier to pygmy-owl movements along and across the border.

We considered a new analysis of Arizona pygmy-owl occupancy (Flesch et al. 2017, entire). This report includes an analysis of factors contributing to pygmy-owl occupancy in Arizona, as well as factors to consider in designing and implementing pygmy-owl conservation actions. In addition, a climate change study that was published since our 2011 12-month finding predicts a reduction in saguaros (*Carnegiea gigantea*) in the Sonoran Desert (Thomas et al. 2012, p. 43). Saguaros are the key nesting substrate for pygmy-owls in the Sonoran Desert of Arizona.

Status in Texas

Threats to the pygmy-owl and pygmy-owl habitat from drought, as well as fire, freezes, and hurricanes (Harvey in 2017, Hanna in 2020, and Ida in 2021) have all continued in Texas over the past decade (EPA 2016, unpaginated; Bhatia et al. 2019, entire; Inciweb 2022, unpaginated; Bond 2022, unpaginated; NDMC 2022, unpaginated; NIFC 2022, unpaginated; NWS 2022, unpaginated). Many of these effects are the result of climate change (Romero-Lankao, et al. 2014, p. 1459; EPA 2016, unpaginated; Gonzalez et al. 2018, entire). Urbanization and agricultural development in both Texas and northeastern Mexico (Texas Land Trends 2019, entire; USGS 2022, unpaginated; Texas Comptroller 2020, unpaginated) have continued, likely resulting in increased isolation of the Texas population from those in Mexico. No recent surveying or monitoring has been conducted in Texas. However, given current habitat conditions as outlined in the SSA report, the declines in pygmy-owls and pygmy-owl habitat

documented in the 2011 12-month finding have likely continued, resulting in reduced abundance of pygmy-owls. For example, the Texas Parks and Wildlife Department recently changed the conservation status rank for ferruginous pygmy-owl in Texas from S3:vulnerable to S2:imperiled (TPWD 2022, unpaginated). In addition, the number and distribution of pygmy-owls in the Lower Rio Grande Valley has declined since 1988, likely due to the ongoing loss of riparian habitats along the Rio Grande (Leslie 2016, entire).

Status in Northern Sonora

Our understanding of the habitat needs for pygmy-owls in the Sonoran Desert has improved since 2011 as a result of ongoing research in northern Sonora (Flesch 2014, entire; Flesch et al. 2015, entire; Flesch 2017, entire; Flesch et al. 2017, entire; Cobbold et al. 2021, entire; Cobbold et al 2022a, entire). The abundance of pygmy-owls in northern Sonora has declined with increasing drought (Flesch et al. 2017, entire; Flesch 2021, entire). Abundance and densities of pygmy-owls are, in general, higher farther south in Sonora in thornscrub and tropical dry forests and lower in the northern part of northwest Mexico (Cobbold et al. 2021, entire; Cobbold et al. 2022a, entire). These data are consistent with previous findings (Flesch 2003, entire). Threats resulting in reduced vegetation condition and increased habitat fragmentation have been documented (Flesch 2014, entire; Flesch et al. 2015, entire; Flesch et al. 2017, entire; Flesch 2021, entire). In 2012, a climate change study was published predicting a reduction in saguaros in the Sonoran Desert (Thomas et al. 2012, p. 43). Saguaros are the key nesting substrate for pygmy-owls in the Sonoran Desert of northern Sonora. In addition, a retired Service biologist who led the Sonoran Joint Venture provided updated information on the status of land use and impacts to pygmy-owls in Sonora (Mesta 2020, pers. comm.).

Status in Remainder of Mexico

There are no recent pygmy-owl survey or monitoring data for the remainder of Mexico, so we continue to have no recent, verified data on abundance or occupancy. We used eBird, iNaturalist, and museum specimen records to get a general scope of occurrences in these areas, but did not use these records to estimate abundance (GBIF 2020, unpaginated; Johnston et al. 2021, p. 1266). Ten additional years of threats acting on these population groups have impacted the landscape and habitat of the pygmy-owl in these areas including extraction of natural resources, increases in invasive species, use of pesticides, and the effects of climate change such as drought and increased evapotranspiration (Enríquez and Vazquez-Perez 2017, p. 546, DataMexico 2021, unpaginated; Murray-Tortarolo 2021; entire; Mesa-Sierra et al. 2022, unpaginated). Specifically, habitat loss and fragmentation has increased since 2011 as a result of wood harvesting, agriculture, population growth and urbanization, and other land uses (CONAPO 2014, p. 25; Enríquez and Vazquez-Perez 2017, p. 546; DataMexico 2021, unpaginated; Burquez 2022, pers. comm.). Increases in hurricanes in northeastern Mexico (EPA 2016, entire) have resulted in impacts to pygmy-owl habitat. We also received additional information related to the status of the pygmy-owl in Mexico such as the lack of research and data, lack of land use planning and government oversight, other threats, establishment of preserve areas, and cultural significance (Enríquez and Vazquez-Perez 2017, p. 546; Enríquez 2021, pers. comm.).

Conservation Actions

Implementation of the Pima County Multi-Species Conservation Plan has resulted in additional surveys for pygmy-owls on lands controlled by Pima County in Arizona. Additional pygmy-owl habitat has been protected through conservation planning and habitat acquisition and protection as part of implementing this large, regional Pima County Habitat Conservation Plan (Pima County 2016, entire; Flesch 2018a, entire; PCOSC 2021, entire). Investigation of captive-breeding and release to establish new pygmy-owl population groups and to augment existing population groups has continued in Arizona (AGFD 2015, entire). The Altar Valley Watershed Plan has been developed and will contribute to the enhancement of pygmy-owl habitat in Altar Valley, Arizona (Altar Valley Watershed Working Group 2022, entire).

Factor A—The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We evaluated new information related to the effects of present and future climate change on vegetation on which the pygmy-owl depends (Bagne and Finch 2012, entire; Coe et al. 2012, entire; Jiang and Yang 2012, entire; Flesch 2014, pp. 113–116; Melillo et al. 2014, entire; Romero-Lankao, et al. 2014, p. 1443; Flesch et al. 2015, entire; Pearce-Higgins et al. 2015, entire; Deguines et al. 2017, entire; Flesch et al. 2017, entire; USGCRP 2018, chapters 23 and 25). The incidence of fires, particularly in Arizona and Texas, has increased since 2011 (Inciweb 2022, unpaginated). While there is not a direct correlation between acres of pygmy-owl habitat lost and human population growth, it is reasonable to find that, as human population grows, the amount of native habitat lost or fragmented will increase. We used updated population growth estimates in the SSA report and this final rule (Brinkhoff 2016, unpaginated; HHS 2017, unpaginated; OEO 2018, unpaginated; INEGI 2021, unpaginated; CONAPO 2014, p. 25; TDC 2019, entire; Pinal County 2019, p. 126; Gonzales 2020, unpaginated; DataMexico 2021, unpaginated; Service 2022a, chapter 7). We also looked at more recent information from Mexico related to habitat loss and fragmentation, which showed that land uses continue to impact pygmy-owl habitat and the occupancy and productivity of pygmy-owls (Enríquez and Vazquez-Perez 2017, p. 546; Flesch et al. 2017, entire). We have also included recent information on the effects of buffelgrass on the ecosystems and habitats used by pygmy-owls (Lyons et al. 2013, p. 8; Vo 2013, entire, Wied et al. 2020, p. 47; ASDM 2022, unpaginated). We also considered new information showing that pygmy-owl occupancy decreases in areas of increased roadway size, agricultural development, and other factors causing pygmy-owl habitat disturbance (Flesch 2017, p. 5; Flesch et al. 2017, entire; Flesch 2021, pp. 12–14).

Factor B—Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have observed a recent increase in visitation by birders (2019 to present) to known pygmy-owl territories (Flesch 2018b, pers. comm., Vaughan 2019, pers. comm.), but we have not studied how that activity has affected occupancy and productivity. We also evaluated more recent information on the impacts of researchers on birds (Gibson et al. 2015, pp. 404–406; Herzog et al. 2020, p. 891).

Factor C—Disease or Predation

We are not aware of any additional information regarding the effects of disease and predation on pygmy-owls since what was included in our 2011 12-month finding.

Factor D—The Inadequacy of Existing Regulatory Mechanisms

Typically, work funded or implemented by Federal agencies complies with a number of environmental laws such as the National Environmental Policy Act and

the Endangered Species Act. However, under the Real ID Act, the U.S. Department of Homeland Security (DHS) waived environmental compliance for much of the border infrastructure work completed recently in Arizona and Texas (Fischer 2019, unpaginated; USCBP 2020, unpaginated). This work included the construction of taller border fencing with lights and associated access roads contributing to habitat loss and fragmentation.

Factor E—Other Natural or Manmade Factors Affecting the Species' Continued Existence

A new potential threat to pygmy-owls was identified subsequent to our 2011 12-month finding as reported in a study that documented pesticides in pygmy-owl feathers and blood (Arrona-Rivera et al. 2016, entire). We also evaluated new information related to climate and weather impacts on pygmy-owls that affect productivity in pygmy-owls as well as pygmy-owl prey species (Flesch 2014, pp. 113–116; Flesch et al. 2015, entire; Pearce-Higgins et al. 2015, entire; Deguines et al. 2017, entire; Flesch et al. 2017, entire). We considered a more recent publication on the potential for small population size to increase extinction risk and the types of information needed to model such risk (Benson et al. 2016, pp. 1–2, 8). During the development of the pygmy-owl SSA report, we sought peer and partner review specifically on our climate change analysis. The responses we received from climate experts were used to update our SSA report and are included in more detail in this final rule.

Additionally, we considered more recent information related to updated climate models, downscaled climate predictions, and information on drought (Bagne and Finch 2012, entire; Coe et al. 2012, entire; Jiang and Yang 2012, entire; Romero-Lankao, et al. 2014, p. 1443; Melillo et al. 2014, entire; Cook et al. 2015, p. 6; Wang et al. 2016, pp. 6–7; Dewes et al. 2017, p. 17; Easterling et al. 2017, entire; Diffenbaugh et al. 2017, entire; Gonzalez et al. 2018, entire; Christensen et al. 2018, p. 5409; Breshears et al. 2018, p. 6; Williams et al. 2020, p. 317; Bradford et al. 2020, entire; BOR 2021, entire). Furthermore, additional IPCC reports have been published since 2011, as well as National Climate Assessments, and we have included these in our climate analysis related to this final rule and the pygmy-owl SSA report (IPCC 2014b, entire; Melillo et al. 2014, entire; USGCRP 2018, chapters 23 and 25; IPCC 2022, entire). We also have new information indicating that climate extremes may be more important than averages (Germain and Lutz 2020, entire) and further evidence that climate has become, and is projected to become, more extreme within the range of the pygmy-owl (Bagne and Finch 2012, entire; Cook et al. 2015, p. 6; Diffenbaugh et al. 2017, entire; Easterling et al. 2017, entire; BOR 2021, entire). Additionally, since our 2011 12-month finding, a climate change study was published predicting a reduction in saguaros in the Sonoran Desert (Thomas et al. 2012, p. 43). Saguaros are the key nesting substrate for pygmy-owls in the Sonoran Desert.

Overall Status and Needs of Pygmy-Owls

Subsequent to our 2011 12-month finding, the IUCN published a Red List Update for the ferruginous pygmy-owl *(Glaucidium brasilianum)* and, although the status remained the same as the 2009 Red List status (Least Concern), the Update acknowledged rangewide declines in the ferruginous pygmy-owl (BirdLife International 2016, unpaginated). We also reviewed and incorporated the updated Birds of North America ferruginous pygmy-owl account (now Birds of the World) (Proudfoot et al. 2020, entire). Additionally, new information has been published further supporting the importance of woodland vegetation and large, unfragmented habitat patches in the Sonoran Desert (Flesch et al. 2015, entire).

Additional Sources of Information

The following includes a list of information sources that were included subsequent to the proposed rule: AdaptWest Project 2015, unpaginated; AdaptWest Project 2022, unpaginated; Altar Valley Watershed Working Group 2022, entire; AGFD 2021b, pers. comm.; AGFD 2022, unpublished data; ASDM 2022, unpaginated; Arrona-Rivera et al. 2016, entire; Bhatia et al. 2019, entire; BirdLife International 2016, unpaginated; Blackie et al. 2014, entire; Bond 2022, unpaginated; Bradford et al. 2020, entire; Breshears et al. 2018, entire; Buffelgrass Working Group 2008, entire; BOR 1947, unpaginated; BOR 2021, entire; Burquez 2022, pers. comm.; Burquez and Martinez-Yrizar 1997, entire; Christensen et al. 2018, entire; Cobbold et al. 2021, entire; Cobbold et al. 2022a, entire; Cobbold et al. 2022b, entire; Cook et al. 2001, entire; Deguines et al. 2017, entire; Dewes et al. 2017, entire; Diffenbaugh et al. 2017, entire; Easterling et al. 2017, entire; Enríquez et al. 2017, entire; Flesch 2003, entire; Flesch 2014, entire; Flesch 2017, entire; Flesch 2018a, entire; Flesch 2018b, pers. comm., Flesch 2021, entire; Flesch et al. 2010, entire; Germain and Lutz 2020, entire; Gonzalez et al. 2018, entire; Gonzales 2020, unpaginated; Gornish and Howery 2019, entire; Herzog et al. 2020, entire; Inciweb 2022, unpaginated; IPCC 2014b, entire; IPCC 2022, entire; Johnson et al. 2004, entire; Johnston et al. 2021, entire; Keith 2007, entire; Lesli 2016, entire; Marris 2006, entire; Mays 1996, entire; Melillo et al. 2014, entire; Meltz and Copeland 2007, entire; Mesa-Sierra et al. 2022, entire; Mesta 2020, pers. comm.; Murray-Tortarolo 2021, entire; NDMC 2022, unpaginated; NIFC 2022, unpaginated; INEGI 2021, unpaginated; NWS 2022, unpaginated; Pearce-Higgins et al. 2015, unpaginated; PCOSC 2021, entire; Pinal County 2019, entire; Romero-Lankao et al. 2014, entire; Texas Comptroller 2020, unpaginated; TDC 2019, entire; Texas Land Trends 2019, entire; TPWD 2022, unpaginated; U.S. Census Bureau 2021b, unpaginated; DHS 2020, unpaginated; U.S. NDMC 2022, unpaginated; EPA 2016, unpaginated; Service 2022b, unpaginated; USGCRP 2018, entire; USGS 2022, unpaginated; EBRC 2021, unpaginated; Valdez et al. 2006, entire; Vaughan 2019, pers. comm.; Vermote et al. 2014, unpaginated; Verwys 2020, pers. comm.; Verwys 2021, pers. comm.; Walker and Pavlakovish-Kochi 2003, entire; Wang et al. 2016, entire; Wied et al. 2020, entire.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the cactus ferruginous pygmy-owl is presented in the SSA report. We summarize this information here.

The cactus ferruginous pygmy-owl is a diurnal, nonmigratory subspecies of ferruginous pygmy-owl and is found from central Arizona south to Michoacán, Mexico, in the west and from south Texas to Tamaulipas and Nuevo Leon, Mexico, in the east. Pygmy-owls eat a variety of prey including birds, insects, lizards, and small mammals, with the relative importance of prey type varying throughout the year.

The pygmy-owl is a small bird, approximately 17 centimeters (cm) (6.7 inches (in)) long. Generally, male pygmy-owls average 58 grams (g) to 66 g (2.0 to 2.3 ounces (oz)) and females average 70 g to 75 g (2.4 to 2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. The crown is lightly streaked, and a pair of dark

brown or black spots outlined in white occurs on the nape, suggesting eyes (Oberholser 1974, p. 451). The species lacks obvious ear tufts (Santillan et al. 2008, p. 154), and the eyes are yellow. The tail is relatively long for an owl and is reddish brown in color, with darker brown bars. Males have pale bands between the dark bars on the tail, while females have darker reddish bands between the dark bars.

Cactus ferruginous pygmy-owls are secondary cavity nesters, nesting in cavities of trees and columnar cacti, with nesting substrate varying throughout its range. Pygmy-owls can breed in their first year and typically mate for life, with both sexes breeding annually. Clutch size can vary from two to seven eggs with the female incubating the eggs for 28 days (Johnsgard 1988, p. 162; Proudfoot and Johnson 2000, p. 11). Fledglings disperse from their natal sites about 8 weeks after they fledge (Flesch and Steidl 2007, p. 36). Pygmy-owls live on average 3 to 5 years but have been documented to live 7 to 9 years in the wild (Proudfoot 2009, pers. comm.) and 10 years in captivity (Abbate 2009, pers. comm.).

Pygmy-owls are found in a variety of vegetation communities, including Sonoran desertscrub and semidesert grasslands in Arizona and northern Sonora, thornscrub and tropical dry forests in southern Sonora south to Michoacán, Tamaulipan brushland in northeastern Mexico, and live oak forest in Texas. At a finer scale, the pygmy-owl is a creature of edges found in semi-open areas of thorny scrub and woodlands in association with giant cacti and in scattered patches of woodlands in open landscapes, such as tropical dry forests and riparian communities along ephemeral, intermittent, and perennial drainages (König et al. 1999, p. 373). It is often found at the edges of riparian and xeroriparian drainages and even habitat edges created by villages, towns, and cities (Abbate et al. 1999, pp. 14–23; Proudfoot and Johnson 2000, p. 5).

The taxonomy of *Glaucidium* is complicated and has been the subject of much discussion and investigation. Following delisting of the pygmy-owl in 2006 (71 FR 19452, April 14, 2006), we were petitioned to relist the pygmy-owl (CBD and DOW 2007, entire). The petitioners requested a revised taxonomic consideration for the pygmy-owl based on Proudfoot et al. (2006a, p. 9; 2006b, p. 946) and König et al. (1999, pp. 160, 370–373), classifying the northern portion of *Glaucidium brasilianum'*s range as an entirely separate species, *G. ridgwayi,* and recognizing two subspecies of *G. ridgwayi: G. r. cactorum* in western Mexico and Arizona and *G. r. ridgwayi* in eastern Mexico and Texas. Other recent studies proposing or supporting the change to *G. ridgwayi* for the northern portion of *G. brasilianum'*s range have been published in the past 20 years (Navarro-Sigüenza and Peterson 2004, p. 5; Wink et al. 2008, pp. 42–63; Enríquez et al. 2017, p. 15).

As we evaluated the cactus ferruginous pygmy-owl's current status, we found that, although there is genetic differentiation at the far ends of the pygmy-owl's distribution represented by Arizona and Texas, uncertainty continues with regard to how this pattern is represented in the southern portion of the range. This latter area represents the boundary between the petitioners' two proposed subspecies (*cactorum* and *ridgwayi* within the proposed reclassification of the species *ridgwayi),* which raises the question of whether there is adequate data to support a change in species classification and define the eastern and western distributions as separate subspecies as proposed by Proudfoot et al. (2006a, entire; 2006b, entire). The Arizona Game and Fish Department (AGFD) completed additional pygmy-owl genetic sampling in the southern portion of the pygmy-owl's range in Mexico in 2022 (Cobbold et al. 2022b, entire). This work did not collect samples far enough south into southern Mexico and Central America to resolve the proposed taxonomic change of Proudfoot et al. (2006a, entire; 2006b, entire), but it did confirm that genetic differentiation does occur across the range of what is currently classified as the subspecies *cactorum,* and that this pattern of differentiation is the result of isolation by distance (Cobbold et al. 2022b, entire). Additionally, this updated analysis and additional genetic sampling did seem to answer the question of whether the Transvolcanic Belt of Mexico at the southern end of the pygmy-owl's range presents a barrier to gene flow across this area.

Based on additional sampling conducted specifically in the area of the Transvolcanic Belt, an area hypothesized to be a potential barrier to movement and gene flow, pygmy-owl samples collected north and south of, as well as within, the Transvolcanic Belt clustered in a single genetically related group (Cobbold et al. (2022b, p. 16). This finding suggests a high degree of gene flow between these population groups. Consequently, the results suggest that the Mexican Transvolcanic Belt does not represent a dispersal barrier to pygmy-owl population groups located on either side of the geological feature within the sampled areas. Additionally, genetic differentiation followed a pattern of isolation by distance, a model under which the strongest differences in genetic structure are expected to occur at the extremities of a species' or subspecies' range (Cobbold et al. 2022b, p. 15). Between the extremities, there is gradual genetic differentiation, rather than abrupt changes, across the range. Sudden changes would be more likely to represent dispersal barriers and, therefore, boundaries between different genetic groupings. Although these datasets show that there are genetic differences across the range of the pygmy-owl, they do not provide adequate evidence of genetic differentiation along the gradient from Arizona to Texas that would warrant the taxonomic changes recommended by Proudfoot et al. (2006a, entire, and 2006b, entire). In particular, sample sizes in the southern portion of the range remain low. Samples in this portion of the range are critical to determining if there are indeed two distinct subspecies of pygmy-owl. While future work and studies may clarify and resolve these issues, we will continue to use the currently accepted distribution of *G. brasilianum cactorum* as described in the 1957 American Ornithologists' Union (now the American Ornithological Society) checklist and various other publications (Friedmann et al. 1950, p. 145; Oberholser 1974, p. 452; Johnsgard 1988, p. 159; Millsap and Johnson 1988, p. 137).

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 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 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 subspecies, including an assessment of the potential threats to the subspecies. The SSA report does not represent our decision on whether the subspecies 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.

To assess cactus ferruginous pygmy-owl 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 subspecies to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the subspecies to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the subspecies to adapt over time 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 subspecies' ecological requirements for survival and reproduction at the individual, population, and subspecies levels, and described the beneficial and risk factors influencing the species' viability.

In the context of the Act, resiliency, redundancy, and representation are influenced by the five listing factors described in the Act. Conversely, the measures of resiliency, redundancy, and representation can indicate the extent to which any or all of the five listing factors are influencing the viability and status of a species in the context of the Act. This relationship between resiliency, redundancy, and representation and the five listing factors is described in more detail in the Threats, Current Condition, Future Scenarios, and Determination of Cactus Ferruginous Pygmy-owl Status sections of this final rule.

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.

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–2021–0098 at *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the cactus ferruginous pygmy-owl and its resources, and the threats that influence the subspecies' current and future condition, in order to assess the subspecies' overall viability and the risks to that viability. The overall geographic range of the pygmy-owl is very large (approximately 140,625 square miles [364,217 square kilometers]) and covers two countries, the United States and Mexico. To assist in our analysis, we divided the overall geographic range of the pygmy-owl into five analysis units based upon biological, vegetative, political, climatic, geographical, and conservation differences. The five analysis units are: Arizona, northern Sonora, western Mexico, Texas, and northeastern Mexico. We analyzed each of these analysis units individually and also analyzed the viability of the subspecies in its entire range.

Threats

We reviewed the potential risk factors, and their applicable listing factor, that could be affecting the resiliency, redundancy, and representation of the pygmy-owl now and in the future including: climate change and climate condition (Factor E), habitat loss and fragmentation (Factor A), human activities and disturbance (Factors B and E), waived or ineffective regulatory mechanisms (Factor D), human-caused mortality (Factors B and E), disease and predation (Factor C), and small population size (Factor E). In this final rule, we will discuss only those factors in detail that could meaningfully impact the status of the subspecies. Those risks that are not known to have effects on pygmy-owl populations, such as disease, are not discussed here but are evaluated in the SSA report. The primary risk factors affecting the current and future status of the pygmy-owl are: (1) Habitat loss and fragmentation (Factor A), and (2) climate change and climate conditions (Factor E). We acknowledge, however, that all of the threats discussed in this final rule and the SSA report can exacerbate or contribute to these two primary threats and that it is important to consider all of the known threats to pygmy-owl populations. For a detailed description of the threats analysis, please refer to the SSA report (Service 2022a, chapter 7).

Habitat Loss and Fragmentation

Pygmy-owls require habitat elements, such as mature woodlands, that include appropriate cavities for nest sites, adequate structural diversity and cover, and a diverse prey base. Urbanization, invasive species, and agricultural or forest production are all causing a reduction in the extent of habitat and an increase in habitat fragmentation throughout the geographic range of the subspecies. In response to a comment we received during the public comment period and prior to finalizing this rule, we completed some additional analysis on the effects of certain land uses in Texas and Arizona over the past decade (2010–2020) on pygmy-owl habitat. The commenter provided results of an analysis they did on changes in land cover within the pygmy-owl analysis areas during the time period of 2010–2015 and suggested that the impacts to pygmy-owl habitat were not as great as we presented in the proposed rule and SSA report. Because it is important to consider the scope, scale, and the factors included in different sources of data, we conducted additional analysis using data sources that provided the same type of data that the commenter used in their analysis. This allowed us to compare the results of additional sources of data with the results presented by the commenter. This additional analysis does not change the outcome of our listing decision, but it does provide additional support for our finding that areas of important pygmy-owl habitat have been lost or modified and habitat fragmentation has continued, at least in Texas and Arizona, during this time period. This further analysis can be found in appendix 6 of the SSA report (Service 2022a, appendix 6).

Urbanization

Urbanization causes permanent impacts on the landscape that potentially result in the loss and alteration of pygmy-owl habitat. Residential, commercial, and infrastructure development replace and fragment areas of native vegetation resulting in the loss of available pygmy-owl habitat and habitat connectivity needed to support pygmy-owl dispersal and demographic support (exchange of individuals and rescue effect) of population groups.

Urbanization can also have detrimental effects on wildlife habitat by increasing the channelization or disruption of riverine corridors, the proliferation of exotic species, and the fragmentation of remaining patches of natural vegetation into smaller and smaller pieces that are unable to support viable populations of native plants or animals (Ewing et al. 2005, pp. 1–2; Nabhan and Holdsworth 1998, p. 2). Human-related mortality (*e.g.,* shooting, collisions, and predation by pets) also increases as urbanization increases (Banks 1979, pp. 1–2; Churcher and Lawton 1987, p. 439). Development of roadways and their contribution to habitat loss and fragmentation is a particularly widespread impact of urbanization (Nickens 1991, p. 1). Data from Arizona and Mexico indicate that roadways and other open areas lacking cover affect pygmy-owl dispersal (Abbate et al. 1999, p. 54; Flesch and Steidl 2007, pp. 6–7; Flesch 2017, p. 5; Flesch et al. 2017, entire; Flesch 2021, pp. 12–14). Nest success and juvenile survival were also lower at pygmy-owl nest sites closer to large roadways, suggesting that habitat quality may be reduced in those areas (Flesch and Steidl 2007, pp. 6–7; Flesch 2017, p. 5).

From 2010 to 2020, various land uses, including urbanization, have resulted in the loss of pygmy-owl habitat in Arizona and Texas (Service 2022a, appendix 6), and this loss and fragmentation of pygmy-owl habitat is likely to continue. While there is not a direct correlation between acres of pygmy-owl habitat lost and human population growth, it is reasonable to conclude that, as human population grows, the amount of native habitat lost or fragmented will increase. From 2010 to 2020, population growth rates increased in all Arizona counties where the pygmy-owl has recently occurred: Pima (9.3 percent); Pinal (25.7 percent); and Santa Cruz (13 percent) (OEO 2018, unpaginated). Many cities and towns within the historical distribution of the pygmy-owl in Arizona experienced substantial growth between April 2010 and July 2019: Casa Grande (20.7 percent); City of Eloy (17.8 percent); City of Florence (7.7 percent); Town of Marana (41.9 percent); Town of Oro Valley (12.2 percent); and the Town of

Sahuarita (20.9 percent) (U.S. Census Bureau 2021a, unpaginated). Urban expansion and human population growth trends in Arizona are expected to continue into the future. The Maricopa-Pima-Pinal Counties area of Arizona is expected to grow by as much as 132 percent between 2005 and 2050, creating rural-urban edge effects across thousands of acres of pygmy-owl habitat (AECOM 2011, p. 13). Additionally, a wide area from the international border in Nogales, through Tucson, Phoenix, and north into Yavapai County (called the Sun Corridor ''Megapolitan'' Area) is projected to have 11,297,000 people by 2050, a 132 percent increase from 2005 (AECOM 2011, p. 13). If build-out occurs as expected, it will encompass a substantial portion of the current and historical distribution of the pygmy-owl in Arizona.

In Texas, the pygmy-owl occurred in relatively high abundance until approximately 90 percent of the mesquite-ebony woodlands of the Rio Grande delta were cleared in 1910–1950 (Oberholser 1974, p. 452). Currently, most of the pygmy-owl habitat occurs on private ranch lands, and, therefore, the threat of habitat loss and fragmentation of the remaining pygmy-owl habitat due to urbanization may be reduced in some areas of Texas. However, urbanization and agriculture along the United States-Mexico border are likely to continue to isolate the Texas population of pygmy-owls by restricting movements between Texas and northeastern Mexico (TDC 2019, entire; Texas Land Trends 2019, entire; USGS 2022, unpaginated).

The United States-Mexico border region has a distinct demographic pattern of permanent and temporary development related to warehouses, exports, and other border-related activities, and patterns of population growth in this area of northern Mexico has accelerated relative to other Mexican States (Pineiro 2001, pp. 1–2). The Sonoran border population has been increasing faster than that State's average and faster than Arizona's border population; between 1990 and 2000, the population in the Sonoran border municipios increased by 33.4 percent, compared to Sonora's average (21.6 percent) and the average increase of Arizona's border counties (27.8 percent). Growth of urban areas in Texas is expected to result in a decrease of rural land uses, further fragmenting habitats in this region (Texas Land Trends 2019, entire). Urbanization has increased habitat conversion and fragmentation, which, along with immigration, population growth, and resource consumption, were ranked as the highest threats to the Sonoran Desert Ecoregion (Nabhan and Holdsworth 1998, p. 1). This pattern focuses development, and potential barriers or impediments to pygmy-owl movements, in a region that is important for demographic support (immigration events and gene flow) of pygmy-owl population groups, including movements such as dispersal.

Significant human population expansion and urbanization in the Sierra Madre foothill corridor may represent a long-term risk to pygmy-owls in northeastern Mexico. From 2010 to 2015 the population in Tamaulipas increased by 8 percent to 3,527,735, and the population in Nuevo León increased by 24 percent to 5,784,442 (DataMexico 2021, unpaginated). Such increasing urbanization results in the permanent removal of pygmy-owl habitat reducing habitat availability and, more significantly, increases habitat fragmentation affecting the opportunity for pygmy-owl movements within northeastern Mexico and between Mexico and Texas. Habitat removal in northeastern Mexico is widespread and nearly complete in northern Tamaulipas (Hunter 1988, p. 8). Demographic support (rescue effect) of pygmy-owl population groups is threatened by ongoing loss and fragmentation of habitat in this area. Urbanization has the potential to permanently alter the last major landscape linkage between the pygmy-owl population in Texas and those in northeastern Mexico (Tewes 1993, pp. 28–29).

Human population growth in Sinaloa, Nayarit, Colima, and Jalisco, Mexico, is ongoing. From 2010 to 2015, the population in Sinaloa grew at a rate of 9.3 percent, Nayarit grew at a rate of 13.9 percent, Jalisco grew at a rate of 13.6 percent, and Colima grew at a rate of 12.4 percent (DataMexico 2021, unpaginated). Growth rates in these areas will likely have some concurrent spread of urbanization despite the fact that most of the growth is taking place in the large cities rather than in the rural areas (Brinkhoff 2016, unpaginated). Additionally, these Mexican States have other threats to pygmy-owl habitat occurring, such as agricultural development and deforestation, that, in combination with habitat lost to urbanization, represent threats to the continued viability of the pygmy-owl in this area (Blackie et al. 2014, p. 1; Burquez 2022, pers. comm.; Mesa-Sierra et al. 2022, entire).

Invasive Species

The invasion of nonnative vegetation, particularly nonnative grasses, has altered the natural fire regime over the Sonoran Desert ecoregion of the pygmy-owl range, in particular, but invasive species impact native habitats in other pygmy-owl analysis units as well (Esque and Schwalbe 2002, p. 165; Lyons et al. 2013, p. 71; Wied et al. 2020, entire). In areas composed entirely of native species, ground vegetation density is mediated by barren spaces that do not allow fire to carry across the landscape. However, in areas where nonnative species have become established, the fine fuel load is continuous, and fire is capable of spreading quickly and efficiently (Esque and Schwalbe 2002, p. 175; Wied et al. 2020, p. 48). As a result, fire has become a significant threat to the native vegetation of the Sonoran Desert. Sonoran Desert vegetation is not fire adapted, and many such vegetative communities in Arizona are no longer in a natural or historical state. Instead, these vegetative communities and their fire dynamics have been inalterably changed by nonnative grasses and forbs, and in some areas by woody shrubs and trees (Gornish and Howery 2019, entire). Nonnative plant communities are problematic not only for imperiled species such as the pygmy-owl, but also for land managers whose goals include forest stewardship and wildfire mitigation for public safety and natural resource protection. The Arizona Wildfire Risk Assessment Portal estimates that a substantial portion of the pygmy-owl range in Arizona (2,433,763 ha; 6,013,959 acres) has a moderate to high risk of experiencing adverse effects of wildfire in the foreseeable future. As discussed elsewhere in this final rule and in our SSA report, such adverse effects include the destruction of roosting and nesting substrate provided by mature trees and columnar cacti. Using conservative estimates from post-fire monitoring performed by the Tonto National Forest, the Arizona Department of Forestry and Fire Management (ADFFM) concluded that over 30 million saguaros could be lost and unlikely to regenerate if a large portion of the area under risk were to burn (ADFFM 2022, pers. comm.).

Nonnative annual plants prevalent within the Sonoran range of the pygmy-owl include *Bromus rubens* and *B. tectorum* (brome grasses), *Schismus* spp. (Mediterranean grasses), and Sahara mustard (*Brassica tournefortii*) (Esque and Schwalbe 2002, p. 165; ASDM 2021, unpaginated). However, the nonnative species that is currently one of the greatest threats to vegetation communities in Arizona and Texas in the United States and northeastern and northwestern Mexico is the perennial *Cenchrus ciliaris* (buffelgrass), which is

prevalent and increasing throughout much of the range of the pygmy-owl (Burquez and Quintana 1994, p. 23; Van Devender and Dimmit 2006, p. 5; Lyons et al. 2013, pp. 68–69; Wied et al. 2020, pp. 47–48).

Buffelgrass is not only fire-tolerant (unlike native Sonoran Desert plant species) but is actually fire-promoting (Halverson and Guertin 2003, p. 13; Lyons et al. 2013, p. 71). Invasion sets in motion a grass-fire cycle where nonnative grass provides the fuel necessary to initiate and promote fire. Nonnative grasses recover more quickly than native grass, tree, and cacti species and cause a further susceptibility to fire (D'Antonio and Vitousek 1992, p. 73; Schmid and Rogers 1988, p. 442). While a single fire in an area may or may not produce long-term reductions in plant cover or biomass, repeated wildfires in a given area, due to the establishment of nonnative grasses, are capable of ecosystem type-conversion from native desertscrub to nonnative annual grassland (Wied et al. 2020, p. 48). These repeated fires may render the area unsuitable for pygmy-owls and other native wildlife due to the loss of trees and columnar cacti and reduced diversity of cover and prey species (Brooks and Esque 2002, p. 336; Wied et al. 2020, p. 48).

The distribution of buffelgrass has been supported and promoted by governments on both sides of the United States-Mexico border as a resource to increase range productivity and forage production (Lyons et al. 2013, p. 65). A 2006 publication estimates that 143,504 ha (3.5 million ac) have been converted to buffelgrass in Sonora, and that between 1990 and 2000, there was an 82 percent increase in buffelgrass coverage (Franklin et al. 2006, pp. 62, 66, 67). Following establishment, buffelgrass fuels fires that destroy Sonoran desertscrub, thornscrub, and, to a lesser extent, tropical dry forest; the disturbed areas are quickly converted to open savannas composed entirely of buffelgrass, which removes pygmy-owl nest substrates and generally renders areas unsuitable for future occupancy by pygmy-owls. Buffelgrass is now fully naturalized in most of Sonora, southern Arizona, and some areas in central and southern Baja California (Burquez-Montijo et al. 2002, p. 131) and now commonly spreads without human cultivation (Burquez et al. 1998, p. 26; Perramond 2000, p. 131; Arriaga et al. 2004, pp. 1509–1511).

Because of the significance of the issue of buffelgrass invasion in Arizona, the Governor of Arizona formed the Arizona Invasive Species Advisory Council in 2005, and the Southern Arizona Buffelgrass Working Group developed the Southern Arizona Buffelgrass Strategic Plan in 2008 (Buffelgrass Working Group 2008, entire) in order to coordinate the control of buffelgrass. Because of its negative impacts to native ecosystems, buffelgrass was declared a noxious weed by the State of Arizona in March 2005. This buffelgrass working group is now led by the Arizona-Sonora Desert Museum (ASDM). The ASDM is currently mapping the extent, and control, of buffelgrass in southern Arizona in an effort to inform and direct management activities (ASDM 2022, unpaginated). These efforts are helping to manage buffelgrass invasion in southern Arizona.

Similar issues occur in Texas. Buffelgrass is now one of the most abundant nonnative grasses in South Texas, and a prevalent invasive grass within the range of the pygmy-owl. During the 1950s, Federal and State land management agencies promoted buffelgrass as a forage grass in South Texas (Smith 2010, p. 113; Lyons et al. 2013, p. 69). Buffelgrass is very well adapted to the hot, semi-arid climate of South Texas due to its drought resistance and ability to aggressively establish in heavily grazed landscapes (Smith 2010, p. 113; Wied et al. 2020, p. 48). Despite increasing awareness of the ecological damage caused by nonnative grasses, buffelgrass is still planted in areas affected by drought and overgrazing to stabilize soils and to increase rangeland productivity. Prescribed burning used for brush control typically promotes buffelgrass forage production in South Texas (Hamilton and Scifres 1982, p. 11). Buffelgrass often creates homogeneous monocultures by out-competing native plants for essential resources (Lyons et al. 2013, p. 8). Furthermore, buffelgrass produces phytotoxins in the soil that inhibit the growth of neighboring native plants (Vo 2013, unpaginated). With regard to pygmy-owl habitat, the loss of trees and canopy cover and the creation of dense ground cover resulting from buffelgrass conversion reduces nest cavity availability, cover for predator avoidance and thermoregulation, and prey availability. Overall, buffelgrass is the dominant herbaceous cover on 10 million ha (24,710,538 acres) in southern Texas and northeastern Mexico (Wied et al. 2020, p. 47).

The impacts of buffelgrass establishment and invasion are substantial for the pygmy-owl in the United States and Mexico because conversion results in the loss of important habitat features, particularly columnar cacti and trees that provide nest sites. Buffelgrass also reduces habitat diversity by creating monocultures of buffelgrass and out-competing native vegetation species (Lyons et al. 2013, pp. 66–67; Wied et al. 2020, p. 48), which decreases prey availability for the pygmy-owl by decreasing the habitat compositional and structural diversity. Buffelgrass invasion and the subsequent fires eliminate most columnar cacti, trees, and shrubs of the desert (Burquez-Montijo et al. 2002, p. 138). This elimination of trees, shrubs, and columnar cacti from these areas is a potential threat to the survival of the pygmy-owl in the northern part of its range, as these vegetation components are necessary for roosting, nesting, protection from predators, and thermal regulation. Invasion and conversion to buffelgrass also negatively affect the diversity and availability of prey species in these areas (Franklin et al. 2006, p. 69; Avila-Jimenez 2004, p. 18; Burquez-Montijo et al. 2002, pp. 130, 135).

Buffelgrass is adapted to dry, arid conditions and does not grow in areas with high rates of precipitation or high humidity, above elevations of 1,265 m (4,150 ft), or in areas with freezing temperatures. Areas that support pygmy-owls south of Sonora and northern Sinaloa typically are wetter and more humid, and conditions are not as favorable for the invasion of buffelgrass. Surveys completed in Sonora and Sinaloa in 2006 noted buffelgrass was present in Sonora and northern Sinaloa, but the more southerly locations were noted as sparse or moderate (Van Devender and Dimmitt 2006, p. 7). However, because buffelgrass was first introduced to Mexico in Tamaulipas and Neuvo Leon, and then subsequently to Sonora and Sinaloa (Lyons et al. 2013, pp. 68–69), buffelgrass and its associated impacts are found in all five of the pygmy-owl analysis units used in our analysis for this final rule.

Agricultural Production and Wood Harvesting

Agricultural development and wood harvesting can result in substantial impacts to the availability and connectivity of pygmy-owl habitat. Conversion of native vegetation communities to agricultural fields or pastures for grazing has occurred within historical pygmy-owl habitat in both the United States and Mexico, and not only removes existing pygmy-owl habitat elements, but also can affect the long-term ability of these areas to return to native vegetation communities once agricultural activities cease. Wood harvesting has a direct effect on the

amount of available cover and nest sites for pygmy-owls and is often associated with agricultural development. Wood harvesting also occurs to supply firewood and charcoal, and to provide material for cultural and decorative wood carvings.

In Arizona, although new agricultural development is limited, the effects to historical habitat are still evident. Many areas that historically supported meso- and xeri-riparian habitat have been converted to agricultural lands, and associated groundwater pumping has affected the hydrology of these valleys (Jackson and Comus 1999, pp. 233, 249). These riparian areas are important pygmy-owl habitat, especially within drier upland vegetation communities like Sonoran desertscrub and semi-desert grasslands.

Habitat fragmentation as a result of agricultural development has also occurred within Texas. Brush-clearing, pesticide use, and irrigation practices associated with agriculture have had detrimental effects on the Lower Rio Grande Valley (Jahrsdoerfer and Leslie 1988, p. 1). From the 1920s until the early 1970s, over 90 percent of pygmy-owl habitat in the Lower Rio Grande Valley of Texas was cleared for agricultural and urban expansion (Oberholser 1974, p. 452). The Norias Division of the King Ranch in southern Texas has been at the center of most research on pygmy-owls in Texas (Mays 1996, entire; Proudfoot 1996, entire), but has been isolated by agricultural expansion, which has restricted pygmy-owl dispersal (Oberholser 1974). This expansion has resulted in loss of pygmy-owl habitat connectivity between pygmy-owl population groups in Texas and in Mexico. From 2010 to 2020, various land uses, including agricultural development and wood harvesting, have resulted in some loss of pygmy-owl habitat in Arizona and Texas (Service 2022a, Appendix 6), and this loss and fragmentation of pygmy-owl habitat is likely to continue based on population growth projections (HHS 2017, unpaginated; OEO 2018, unpaginated; TDC 2019, entire; Pinal County 2019, p. 126; Gonzales 2020, unpaginated).

Historically, agriculture in Sonora, Mexico, was restricted to small areas with shallow water tables, but it had, nonetheless, seriously affected riparian areas by the end of the nineteenth century. For example, in the Rio Mayo and Rio Yaqui coastal plains, nearly 1 million ha (2.5 million ac) of mesquite, cottonwood, and willow riparian forests and coastal thornscrub disappeared after dams upriver started to operate (Burquez and Martinez-Yrizar 2007, p. 543). Other Mexican States within the range of the pygmy-owl show similar potential for habitat loss. For example, in Tamaulipas, areas under irrigation increased from 174,400 to 494,472 ha (431,000 to 1.22 million ac) between 1998 and 2004, with an area of 668,872 ha (1.65 million ac) equipped for irrigation. However, agricultural development in the States of Colima, Jalisco, Nayarit, and Nuevo Leon had decreases in the amount of irrigated lands over the same period (FAO 2007, unpaginated).

There is some evidence that historical agricultural practices by indigenous peoples and early settlers provided and potentially enhanced available pygmy-owl habitat in Arizona, primarily through the development of irrigation canals that promoted the presence of woody vegetation (BOR 1947, unpaginated; Johnson et al. 2004, p. 139). However, more recent agricultural developments typically remove areas of native vegetation resulting in pygmy-owl habitat loss and fragmentation over relatively large areas, causing reductions in ground and surface waters impacting riparian systems important to the pygmy-owl and pygmy-owl prey species, and resulting in habitat fragmentation and loss of habitat connectivity for the pygmy-owl. While the loss and fragmentation of habitat is more of an historical impact in Arizona and Texas, some agricultural development continues in these areas and some historical impacts are still evident. In Mexico, agricultural development is an ongoing threat to pygmy-owl habitat (Burquez 2022, pers. comm.).

Wood harvesting is also a potential threat to pygmy-owl habitat. Ironwood (*Olneya tesota*) and mesquite (*Prosopis* spp.) are harvested throughout the Sonoran Desert for use as charcoal, fuelwood, and carving (Burquez and Martinez Yrizar 2007, p. 545). For instance, by 1994, 202,000 ha (500,000 ac) of mesquite had been cleared in northern Mexico to meet the growing demand for mesquite charcoal (Haller 1994, p. 1). Flesch (2021, pp. 11, 13) noted that pygmy-owl habitat impacts from charcoal operations are still occurring in Sonora. Unfortunately, woodcutters and charcoal makers used large, mature mesquite and ironwood trees growing in riparian areas (Taylor 2006, p. 12), which is the tree class that is of most value as pygmy-owl habitat. Loss of leguminous trees results in long-term effects to the soil as these trees add organic matter, fix nitrogen, and add sulfur and soluble salts, affecting overall habitat quality and quantity (Rodriguez-Franco and Aguirre 1996, p. 6–47). Ironwood and mesquite trees are important nurse plant species for saguaros, the primary nesting substrate for pygmy-owls in the northern portion of their range (Burquez and Quintana 1994, p. 11). Declining tree populations in the Sonoran Desert as a result of commercial uses and land conversion threatens other plant species and may alter the structure and composition of the vertebrate and invertebrate communities as well (Bestelmeyer and Schooley 1999, p. 644). This has implications for pygmy-owl prey availability because pygmy-owls rely on a seasonal diversity of vertebrate and invertebrate prey species; loss of tree structure and diversity reduces prey diversity and availability.

Once common in areas of the Rio Grande delta, significant habitat loss and fragmentation due to woodcutting have now caused the pygmy-owl to be a rare occurrence in this area of Texas. Oberholser (1974, p. 452) concluded that agricultural expansion and subsequent loss of native woodland and thornscrub habitat, begun in the 1920s, preceded the rapid demise of pygmy-owl populations in the Lower Rio Grande Valley of southern Texas. Because much of the suitable pygmy-owl habitat in Texas occurs on private ranches, habitat areas are subject to potential impacts that are associated with ongoing ranch activities such as grazing, herd management, fencing, pasture improvements, construction of cattle pens and waters, road construction, and development of hunting facilities. Brush-clearing, in particular, has been identified as a potential factor in present and future declines in the pygmy-owl population in Texas (Oberholser 1974, p. 452). Conversely, ranch practices that enhance or increase pygmy-owl habitat to support ecotourism can contribute to conservation of the pygmy-owl in Texas (Wauer et al. 1993, p. 1076).

Habitat fragmentation in northeastern Mexico is extensive, with only about two percent of the ecoregion remaining intact, and no habitat blocks larger than 250 square km (96.5 square mi), and no significant protected areas (Cook et al. 2001, p. 4). Fire is often used to clear woodlands for agriculture in this area of Mexico, and many of these fires are not adequately controlled. There may be fire-extensive related effects to native plant communities (Cook et al. 2001, p. 4); however, there is no specific information available for how much area may be affected by this activity.

Areas of dry subtropical forests, important habitat for pygmy-owls in southwestern Mexico, have been used by humans through time for settlement

and various other activities (Trejo and Dirzo 2000, p. 133; Blackie et al. 2014, pp. 1–2). The long-term impact of this settlement has converted these dry subtropical forests into shrublands and savannas lacking large trees, columnar cacti, and cover and prey diversity that are important pygmy-owl habitat elements. In Mexico, tropical dry forest is the major type of tropical vegetation in the country, covering over 60 percent of the total area of tropical vegetation. About 8 percent (approximately 160,000 square km (61,776 square mi)) of this forest remained intact by the late 1970s, and an assessment made at the beginning of the present decade suggested that 30 percent of these tropical forests have been altered and converted to agricultural lands and cattle grasslands (Trejo and Drizo 2000, p. 134; Mesa-Sierra et al. 2022, unpaginated). Tropical dry forests, such as Selva baja caducifolia and Bosque tropical caducifolio, are the most important reservoir of biodiversity along the Pacific coast of Mexico (Burquez 2022, pers. comm.). Extensive reductions in these habitats have occurred in the past. For instance, extensive irrigation systems have been developed along the coasts of Sinaloa and Nayarit, and in more localized areas in Jalisco, Michoacán, and Guerrero. These and other land-transformation pressures affecting tropical dry forests have not diminished with time (Burquez 2022, pers. comm.).

Summary of Habitat Loss and Fragmentation

In summary, pygmy-owls require habitat elements such as mature woodlands that include appropriate cavities for nest sites, adequate structural diversity and cover, and a diverse prey base. These habitat elements need to be available across the geographic range of the pygmy-owl and spatially arranged to allow connectivity between habitat patches. Pygmy-owl habitat loss and fragmentation have affected, and are continuing to affect, pygmy-owl viability throughout its range.

These threats vary in scope and intensity throughout the pygmy-owl's geographic range, and specific threats are a more significant issue in certain parts of the range than in others. For example, in Arizona and Northern Sonora, pygmy-owl habitat loss and fragmentation resulting from urbanization, changing fire regimes due to the invasion of buffelgrass, and agricultural development and woodcutting are significant threats that have negatively affected pygmy-owl habitat. In Texas, historical loss of habitat has reduced the pygmy-owl range, and, in Texas and other areas of the pygmy-owl's range, these past impacts continue to affect the current extent of available pygmy-owl habitat, because of the extended time it takes for these lands to recover. Therefore, even if habitat destruction ceases, the negative effects of past land use are expected to continue in many of these areas into the future, and this will be a cumulative impact with current impacts from invasive species, agricultural development, and other land use practices (Texas Land Trends 2019, entire; Wied et al. 2020, entire; DHS 2020, unpaginated; USGS 2022, unpaginated).

One of the most pressing issues for the U.S.-Mexico border is the impact of illegal human and vehicular traffic through these unique and environmentally sensitive areas. Many of these locations now bear the scars of wildcat trails, abandoned refuse, and trampled vegetation (Marris 2006, p. 339; Walker and Pavlakovich-Kochi 2003, p. 15). Trails and roadways remove pygmy-owl habitat features; noise and disturbance from people and vehicles disrupt important behaviors; and there is an increased risk of fire in important habitats resulting from cooking and warming fires, as well as signal fires used by cross-border immigrants and smugglers.

For the remainder of the pygmy-owl's range and habitat in Mexico (northeastern Mexico and south of Sonora), data available for our analysis were limited. Available data that we considered regarding population growth and land use patterns indicates that human population growth throughout Mexico is occurring (INEGI 2021, unpaginated; CONAPO 2014, p. 25; DataMexico 2021, unpaginated). Historical loss of pygmy-owl habitat in northeastern Mexico has occurred, and recent increases in agricultural development are occurring in Tamaulipas (FAO 2007, unpaginated). Tropical dry forests, one of the most biologically significant vegetation communities in Mexico and important pygmy-owl habitat, has been significantly reduced and is continuing to be lost (Burquez 2022 pers. comm.; Mesa-Sierra et al. 2022, unpaginated).

This information indicates that the impacts to pygmy-owl habitat discussed herein may be having different levels of effects on the populations of pygmy-owls throughout their range and, while not every activity is occurring in every analysis unit, every analysis unit is experiencing habitat loss and fragmentation (Service 2022a, appendix 5). Enríquez and Vazquez-Perez (2017, p. 546) indicate that, during the last 50 years, Mexico has seen drastic changes in land uses due to rapid urbanization and industrialization, which has been poorly planned. The result has been impacts to the natural environment, including the degradation and loss of biological diversity in Mexico. There has been limited work in Mexico, however, to understand what the direct impacts of these threats are on owl population losses and changes in distribution and abundance of subspecies in the long term (Enríquez and Vazquez-Perez 2017, p. 546).

Habitat loss and fragmentation will impact both the eastern and western populations of pygmy-owls through reduced size and number of suitable blocks of nesting habitat and nest cavity availability, loss and reduction of habitat connectivity and the ability of pygmy-owls to move across the landscape to provide demographic and genetic rescue, loss and reduction of prey availability, and the increase of potential threats related to predation, pesticides, and human disturbance.

Climate Change and Climate Conditions

Enough time has passed since the early predictions of impacts of climate change that we have seen evidence of those predicted impacts on vegetation communities across the range of the pygmy-owl (Vermote et al. 2014, unpaginated; Romero-Lankao, et al. 2014, p. 1459; Williams et al. 2020, p. 317; IPCC 2022, entire). New climate models and projections, updated Normalized Difference Vegetation Index (NDVI) datasets, and an assessment examining pygmy-owl's vulnerability to climate change have been completed since our analysis in the 2011 pygmy-owl 12-month finding (Bagne and Finch 2012, pp. 67–73; Coe et al. 2012, entire; Jiang and Yang 2012, entire; IPCC 2014b, entire; Romero-Lankao, et al. 2014, entire; Melillo et al. 2014, entire; Vermote et al. 2014, unpaginated; AdaptWest Project 2015, unpaginated; Cook et al. 2015, entire; Pascale et al. 2017, p. 806; USGCRP 2018, chapters 23 and 25; Gonzalez et al. 2018, entire; Christensen et al. 2018, p. 5409; BOR 2021, entire; AdaptWest Project 2022, unpaginated; IPCC 2022, entire). These projections continue to predict impacts at the same or increasing levels upon the landscape in areas where the pygmy-owl occurs.

In the SSA report, the proposed rule, and this final listing rule, we used newer modeling related to climate that was not used in our 2011 12-month finding, and this change reduced the subjectivity of our approach to evaluate the effects to pygmy-owl habitat effects

(Vermote et al. 2014, unpaginated; AdaptWest Project 2015, unpaginated; Wang et al. 2016, pp. 6–7; Dewes et al. 2017, p. 17; Diffenbaugh et al. 2017, entire; AdaptWest Project 2022, unpaginated; Service 2022a, chapter 6, appendices 2 and 3). Furthermore, additional IPCC reports have been published since 2011, as well as National Climate Assessments, and we have included the appropriate information found in these sources in our climate analysis to ensure that we considered the most current and best information available. These sources represent the current understanding of the evidence and effects of climate change (IPCC 2014b, entire; Melillo et al. 2014, entire; USGCRP 2018, chapters 23 and 25; IPCC 2022, entire).

Climate change projections within the geographic range of the pygmy-owl show that increasing temperatures, decreasing precipitation, and increasing intensity of weather events are likely (Karmalkar et al. 2011, entire; Bagne and Finch 2012, entire; Coe et al. 2012, entire; and Jiang and Yang 2012, entire; BOR 2021; p. 23). Climate influences pygmy-owl habitat conditions and availability through the loss of vegetation cover, reduced prey availability, increased predation, reduced nest site availability, and vegetation community change. The majority of the current range of the pygmy-owl occurs in tropical or subtropical vegetation communities, which may be reduced in coverage if climate change results in hotter, more arid conditions. Extended drought has and continues to affect vegetation communities used by the pygmy-owl in the United States (NDMC 2022, unpaginated). Additionally, models predict that the distribution of suitable habitat for saguaros, the primary pygmy-owl nesting substrate within the Sonoran Desert ecoregion, will substantially decrease over the next 50 years under a moderate climate change scenario (Weiss and Overpeck 2005, p. 2074; Thomas et al. 2012, p. 43).

Climate change scenarios project that drought will occur more frequently and increase in severity, with a decrease in the frequency and increase in severity of precipitation events (Seager et al. 2007, p. 9; Cook et al. 2015, p. 6; Pascale et al. 2017, p. 806; Williams et al. 2020, p. 317; BOR 2021, p. 23). Drought and changes to the timing and intensity of precipitation events may reduce available cover and prey for pygmy-owls adjacent to riparian areas through scouring flood events and reduced moisture retention. The extent to which changing climatic patterns will affect the pygmy-owl is better understood following the past decade of observations in the field. For example, in northern Sonora, the summer monsoon's precipitation (or lack thereof) has a significant effect on whether or not juvenile pygmy-owls reach adulthood, as the lizards preferred by these owls are more abundant when summer precipitation does not fall below normal levels. Climate change has made the amount of summer precipitation more variable than it used to be. Average summer monsoons in the Sonoran Desert produce 2.43 inches of rain. In years like 2019 and 2020, however, when summer rainfall was significantly below average (0.66 inches and 1.0 inches respectively), there was less prey for juveniles to eat as they entered adulthood, and thus fewer owls survived. In years like 2015–2016, when the amount of precipitation from the summer monsoon was above average, more juveniles survived to adulthood and owl population levels in those years did not decline (Flesch 2021, entire).

Synergistic interactions are likely to occur between the effects of climate change and habitat fragmentation and loss. Climate change projections indicate that conditions will likely favor increased occurrence and distribution of nonnative, invasive species and alteration of historical fire regimes. Climate change may also affect the viability of the pygmy-owl through precipitation-driven changes in plant and insect biomass, which in turn influence abundance of lizards, small mammals, and birds (Jones 1981, p. 111; Flesch 2008, p. 5; Flesch et al. 2015, p. 26). Decreased precipitation generally reduces plant cover and insect productivity, which in turn reduces the abundance and availability of pygmy-owl prey species. Similarly, increased temperatures reduce pygmy-owl prey activity due to increased energetic demands of thermoregulation and a decreased availability of prey and cover (Flesch 2014, p. 116; Flesch et al. 2015, p. 26). These indirect effects on prey availability and direct effects on prey activity affect nestling growth, development, and survival. When decreased precipitation affects food supply and increased temperature affects prey activity, reduced pygmy-owl productivity is likely to result in reduced pygmy-owl resiliency (Flesch et al. 2015, p. 26).

A recent downscaled hydroclimate study reported predicted climate impacts within the range of the pygmy-owl in Arizona (BOR 2021, entire). In general, the scenarios for the greenhouse gas emissions model that approximates our current trajectory predicts that monsoonal rain will be reduced, as well as more highly variable. Temperatures will also increase significantly during both winter (between 1.88 °Fahrenheit (F) and 3.20 °F) and summer (between 2.59 °F and 3.34 °F). As a result, streamflow throughout the area covered by this effort, including the Avra and Altar valleys, which are occupied by pygmy-owls, is likely to be reduced, which would negatively impact infiltration into the aquifer. These changes are likely to impact pygmy-owls and their prey species in a variety of ways, many of them negative. For example, increased evapotranspiration and reduced soil moisture could negatively impact prey species that pygmy-owls depend on, reduce the amount and/or quality of vegetation necessary for roosting, thermoregulation, and predator avoidance, amplify fire risk and concomitant compromise of necessary woodland vegetation and availability of mature saguaro cacti, as well as lead to reduced nestling fitness if nest cavity temperatures rise too high (Flesch et al. 2015, p. 26; Service 2022a, chapter 6; Flesch 2021, entire). Climate change can also influence natural events, such as hurricanes and tropical storms, which can modify and fragment pygmy-owl habitats, primarily through loss of woody cover, as evidenced in Texas and northeastern Mexico (Hurricane Harvey in 2017, Hurricane Hanna in 2020, and Hurricane Ida in 2021). Historical and ongoing threats to the pygmy-owl from habitat loss and fragmentation as well as from climate change and climate conditions, have shaped the current habitat and population conditions of the subspecies throughout its range.

In summary, climate change and its associated change in conditions on the landscape will impact both the eastern and western pygmy-owl populations through habitat loss and fragmentation, reduced nest cavity availability, reduced prey populations, lower productivity, and reduced survivability.

Current Condition

To assess resiliency, we evaluated six components that broadly related to the subspecies' population demography or physical environment and for which we had data sufficient to conduct the analysis. We assessed each analysis unit's physical environment by examining three components determined to have the most influence on the subspecies: habitat intactness, prey availability, and vegetation health and cover (Flesch 2017, entire). We also assessed each analysis unit's demography through abundance, occupancy, and evidence of reproduction. We established

parameters for each component by evaluating the range of existing data and separating those data into categories based on our understanding of the subspecies' demographics and habitat. Using the demographic and habitat parameters, we then categorized the overall condition of each analysis unit. We provide a summary of each of the six factors below and describe them in detail in the SSA report (Service 2022a, entire).

Demographic Factors

Abundance: Larger populations have a lower risk of extinction than smaller populations (Pimm et al. 1988, pp. 773–775; Trombulak et al. 2004, p. 1183). Small populations are less resilient and more vulnerable to the effects of demographic, environmental, and genetic stochasticity, and have a higher risk of extinction than larger populations (Trombulak et al. 2004, p. 1183). Small populations may experience increased inbreeding, loss of genetic variation, and ultimately a decreased potential to adapt to environmental change (Trombulak et al. 2004, p. 1183; Harmon and Braude 2010, p. 125; Benson et al. 2016, pp. 1–2). The abundance of pygmy-owls within each analysis unit must be high enough to support persistence of pygmy-owl population groups (multiple breeding pairs of pygmy-owls within relatively discrete geographic areas) within the analysis unit. This persistence of population groups is accomplished by having adequate patches of habitat to support multiple nesting pairs of pygmy-owls and their offspring, having adequate habitat connectivity to support establishment of additional territories by dispersing young, and having a supply of floaters (unpaired individuals of breeding age) within each pygmy-owl population group to offset loss of breeding adults and to provide potential mates for dispersing juveniles. In order to compare the resiliency of the individual analysis units, we estimated the general magnitude of the abundance of pygmy-owls within each analysis unit (Service 2022a, chapter 6 and table 4.2). However, these estimates of the magnitude of abundance should not be construed as actual population estimates (see *Summary of Current Condition of the Subspecies* below).

Occupancy: Sufficiently resilient pygmy-owl populations must occupy large enough areas such that stochastic events and environmental fluctuations that affect individual pygmy-owls, or population groups of pygmy-owls, do not eliminate the entire population. Pygmy-owls are patchily distributed across the landscape in population groups of nesting owls. Each of these population groups must contain a high enough abundance of pygmy-owls to enable the population group to persist on the landscape over time. Enough occupied population groups of pygmy-owls must also exist on the landscape, with interconnected habitat supporting movement among population groups, so that each population group can receive or exchange individuals with any given adjacent population group.

Pygmy-owl occupancy is an indicator of habitat conditions as well as demographic factors, such as reproduction and survival. Habitats that support a high abundance of pygmy-owls are better able to provide floaters and available mates to dispersing pygmy-owls from adjacent populations. These floaters are able to serve as replacement breeders if either or both members of an existing breeding pair are lost. Observations indicate that if a site is occupied by a breeding pair, they will breed. Survival of adults also affects occupancy, as some occupied sites will be abandoned if one of the adult breeders perishes. These sites can be reoccupied in the future when floaters or dispersing birds move into the area.

Evidence of reproduction: Adequately resilient pygmy-owl populations must also reproduce and produce a sufficient number of young such that recruitment equals or exceeds mortality. Current population size and abundance reflects previous influences on the population and habitat, while reproduction and recruitment reflect population trends that may be stable, increasing, or decreasing in the future. Adequately resilient populations of the pygmy-owl must have sufficient abundance to replace members of breeding pairs that have been lost and to support persistent population groups of nesting pygmy-owls through dispersal. However, the necessary reproductive rate needed for a self-sustaining population is unknown. Additionally, key demographic parameters of pygmy-owl populations (*e.g.,* survival, life expectancy, lifespan, productivity, etc.) are unknown throughout most of the geographic range. Due to the lack of information on demographic parameters of reproduction, recruitment, and survival, we broadly considered evidence of reproduction to include any evidence of reproduction (*e.g.,* active nests, presence of eggs or nestlings, fledglings, etc.), as well as persistence of occupied territories and population groups in an area over a sufficient amount of time to indicate evidence of reproduction. Thus, evidence of reproduction on a consistent basis over time likely indicates a sufficiently resilient population.

Habitat intactness: Adequately resilient pygmy-owl populations need intact habitat that is large enough to support year-round occupancy, as well as connectivity between habitat patches to enable dispersal. As the baseline for our analysis of habitat intactness, we modeled suitable vegetation types across the range of the pygmy-owl that provide habitat for the pygmy-owl (Service 2022a, chapter 6 and appendix 1). We know that the modeled suitable vegetation does not equal pygmy-owl habitat and that the acres of suitable vegetation are greater than the actual acres of pygmy-owl habitat. However, modeled suitable vegetation does provide a surrogate for acres of pygmy-owl habitat. Pygmy-owls are patchily distributed across much of their geographic range. These pygmy-owl population groups are dependent on interchange of individuals in order to maintain adequate abundance and genetic diversity on the landscape. Habitat connectivity is crucial to maintaining pathways for the interchange of individuals among pygmy-owl population groups (Flesch 2017, entire).

Prey availability: Adequate prey availability is a key component for maintaining resiliency in pygmy-owl populations. Year-round prey availability is essential throughout the range of the pygmy-owl, with portions of the geographic range characterized by seasonal variability in available prey resources. The abundance of many of these prey species is influenced by annual and seasonal precipitation through increases and decreases in vegetation cover and diversity, which also influences insect abundance and availability. Sufficiently resilient pygmy-owl populations require adequate precipitation to support year-round prey availability. This includes appropriately timed precipitation to support seasonally available prey such as lizards, insects, and small mammals.

Vegetation cover: Sufficiently resilient pygmy-owl populations require adequate vegetation to provide cover for predator avoidance, thermoregulation, hunting, and nest cavities. Of primary importance for cover is the presence of woody vegetation canopy. Maintenance of the health and vigor of this woody cover is a key component to maintaining resiliency of pygmy-owl populations.

Summary of Current Condition of the Subspecies

Currently, the cactus ferruginous pygmy-owl occurs from southern Arizona, south to Michoacán in the

western portion of its range, and from southern Texas to Tamaulipas and Nuevo Leon in the eastern portion of its range. For our analysis, we divided the pygmy-owl's overall range into five analysis units: Arizona, northern Sonora, western Mexico, Texas, and northeastern Mexico (see Figure 1). In order to compare the resiliency of the individual analysis units, we estimated the general magnitude of the abundance of pygmy-owls within each analysis unit (Service 2022a, chapter 6 and table 4.2). This estimated magnitude of abundance is one of the demographic factors used to evaluate the resiliency of each analysis unit. These estimates of the magnitude of abundance should not be construed as actual population estimates. We lack sufficient data to make any statistically meaningful population estimates for any of the analysis units. Rather, these estimates of the magnitude of pygmy-owl abundance are used as a tool to compare the general abundance of pygmy-owls in each analysis unit.

The primary factors currently affecting the condition of cactus ferruginous pygmy-owl populations include changing climate conditions, and habitat fragmentation and loss. The threats contributing to or resulting from these two primary factors do not occur consistently across all analysis units, but all analysis units are being impacted by one or more of the threats discussed in this final rule and the SSA report (see Service 2022a, appendix 5 for a more detailed discussion of the particular threats impacting each analysis unit). Information from the northern Sonora analysis unit provides evidence of what factors contribute to the viability of pygmy-owl populations. Flesch (2014, pp. 114–117) showed that, at least in the northern portion of the western pygmy-owl population, pygmy-owl abundance was consistently higher and varied less in areas with more nest cavities, more riparian vegetation, and lower land-use intensity, suggesting these factors are important drivers of pygmy-owl habitat quality. We have also identified which of the five listing factors identified in the Act are influencing the current condition of the pygmy-owl.

Resiliency

The Arizona analysis unit currently has the lowest pygmy-owl abundance of all analysis units, which is estimated to be in the low hundreds. Habitat fragmentation and loss from urbanization and increases in invasive species such as buffelgrass, have reduced the availability and connectivity of habitat in this analysis unit (Factor A). Additionally, climate conditions have reduced prey availability and vegetative cover through increased temperatures and drought (Factor E). These factors result in a reduced capacity for this analysis unit to withstand stochastic events and result in a low resiliency currently.

The northern Sonora analysis unit has an estimated pygmy-owl abundance in the high hundreds. However, this analysis unit is affected by habitat fragmentation from urbanization, agricultural development, and associated infrastructure (Flesch 2021, pp. 12–14) (Factor A). These stressors increase water use and, in conjunction with climate conditions, result in a reduction in the quality and availability of pygmy-owl habitat (Factor A). Abundance of pygmy-owls in the Sonoran Desert in northwest Mexico, for example, declined about 19–27 percent over a 12-year period, and change in owl abundance was highly associated with variation in precipitation and temperature (Factor E). In addition, hot, dry conditions influence the behavior and health of prey species the owl relies upon for food. For example, lizards are both less abundant and move less frequently as temperatures rise, making it more difficult for owls to spot and capture them (Flesch 2021, entire).

Based on moderate owl abundance and some decrease in habitat availability and connectivity, the northern Sonora analysis unit has a moderate level of population resiliency. Information from surveys and monitoring in 2021 in the northern Sonora analysis unit indicated a decline in pygmy-owl occupancy and an increase in habitat loss and fragmentation (Flesch 2021, pp. 12–14) and is evidence of decreasing resiliency in this analysis unit.

The western Mexico analysis unit is estimated to have tens of thousands of pygmy-owls. This analysis unit has some habitat fragmentation from urbanization, agricultural development, and deforestation of the tropical dry forests (Factor A). Overall, the western Mexico analysis unit has high population resiliency due to high abundance of pygmy-owls and generally healthy vegetation cover, likely as a result of higher levels of precipitation in the region than in other parts of the pygmy-owl's range.

The Texas analysis unit has an estimated pygmy-owl abundance in the high hundreds. Land ownership within this analysis unit has resulted in habitat fragmentation (Factor A) and, due to agricultural development and wood harvesting within the Rio Grande Valley, this analysis unit is somewhat genetically isolated from the rest of the geographic range of the subspecies (Factor E). Due to moderate pygmy-owl abundance, fragmentation of habitat, and some genetic isolation, the Texas analysis unit has a moderate level of population resiliency.

The northeast Mexico analysis unit is estimated to have tens of thousands of pygmy-owls. However, this unit has high levels of habitat fragmentation due to urbanization and agricultural development (Factor A). Overall, the northeast Mexico analysis unit has a moderate level of population resiliency with some capacity to withstand stochastic events. Rangewide, current condition of the pygmy-owl populations indicate that three analysis units are maintaining a moderate level of population resiliency, one analysis has low resiliency, and one analysis unit has high resiliency.

Representation

Resiliency, and the factors that drive resiliency, also contribute to the pygmy-owl's representation on the landscape. Pygmy-owls occupy a diversity of habitat types throughout the geographic range of the subspecies and maintain substantial genetic diversity. The subspecies' adaptive potential (representation) is currently high due to genetic and ecological variability across the range. There is substantial genetic diversity across the range (Proudfoot et al. 2006a, entire; 2006b, entire; Cobbold et al. 2022b, entire) due to isolation-by-distance and geographic barriers. Additionally, across the range, the pygmy-owl occupies a diverse range of ecological settings as a result of geographic gradients of vegetation, climate, elevation, topography, and other landscape elements. Such ecological diversity could help the pygmy-owl adapt to and survive future environmental changes, such as warming temperatures or decreased precipitation from climate change.

Redundancy

We assessed the number and distribution of population groups across the pygmy-owl's geographic range as a measure of its redundancy. While the abundance and densities of pygmy-owls are lower in some analysis units, these portions of the range still contribute in a meaningful way to the overall pygmy-owl population. Each analysis unit within the geographic range of the subspecies maintains a network of population groups that are connected both within and between analysis units. These population groups have the potential to recolonize areas where other population groups are lost to catastrophic events. All analysis units

contribute to the total rangewide population, and population groups within each analysis unit provide population support for that analysis unit and adjacent portions of the range. If an analysis unit is self-sustaining, it provides redundancy across the range, and may provide emigrants to support adjacent analysis units.

Exchange of individual cactus ferruginous pygmy-owls occurs among population groups within the Arizona, northern Sonora, and Texas analysis units, and between the Arizona and northern Sonora analysis units (Abbate et al. 2000, p. 30; Flesch and Steidl 2007, p. 37; Proudfoot et al. 2020, unpaginated; AGFD 2022, unpublished data). Habitat fragmentation and reduced vegetation health, as a result of ongoing drought and various land uses, have resulted in the extirpation of population groups in Arizona and Texas (Factor A), but redundancy was exhibited in the northern Sonora analysis unit when drought conditions eased and historically occupied areas were reoccupied (Flesch et al. 2017, p. 12). However, abundance has once again declined in northern Sonora and increased habitat loss and fragmentation likely are decreasing pygmy-owl habitat connectivity within this analysis unit and likely between the northern Sonora and Arizona analysis units (Factor A) because both analysis units are experiencing similar conditions (Flesch et al. 2017, entire; Flesch 2021, p. 9).

Despite existing habitat fragmentation, exchange of individual pygmy-owls occurs between population groups and between some analysis units is still occurring (Abbate et al. 2000, p. 30; Flesch and Steidl 2007, p. 37; Proudfoot et al. 2020, unpaginated; AGFD 2022, unpublished data). Habitat types used by pygmy-owls vary across the range, with some vegetation types being restricted to certain portions of the geographic range. It is important to maintain pygmy-owl populations throughout the range to provide redundancy to adjacent populations in similar habitat conditions. Due to the broad geographic distribution and network of population groups that are connected within and between some analysis units throughout most of its range, the pygmy-owl has some ability to recolonize following catastrophic events (Flesch et al. 2017, p. 12) and is considered to have adequate redundancy.

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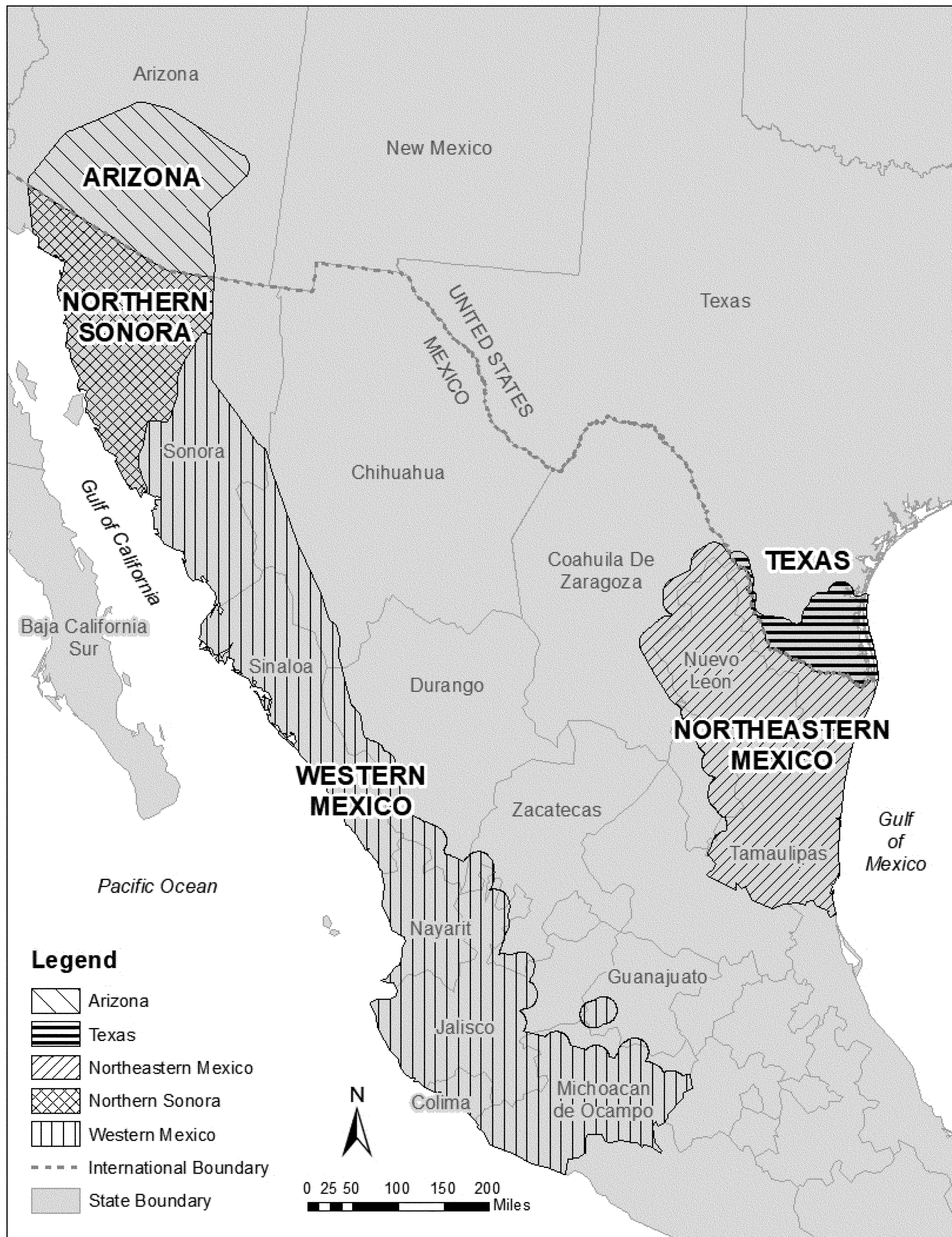

Figure 1. Cactus ferruginous pygmy-owl's range in the United States and Mexico, including the five analysis units used in the species status assessment.

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Future Scenarios

In our SSA report, we defined viability as the ability of a species to sustain populations in the wild over time. To help address uncertainty associated with the degree and extent of potential future stressors and their impacts on species' needs, we assessed the principles of resiliency, redundancy, and representation using three plausible future scenarios that represent a reasonable range of outcomes that we expect could occur. We developed these scenarios by identifying information on the following primary factors anticipated to affect the cactus ferruginous pygmy-owl in the future: climate change, habitat loss and fragmentation, and ongoing conservation efforts (Flesch 2017, entire). The three scenarios capture the range of uncertainty in the changing landscape and how the pygmy-owl would likely respond to changing conditions.

We used the best available data and models to project out 30 years into the future (*i.e.,* 2050). This is appropriate because, as we discuss later in the document, we define 30 years as the foreseeable future for our analysis of pygmy-owl viability and whether the species is a threatened species. We chose this timeframe based on the subspecies' lifespan and observed cycles in population abundance, as well as the time period where we could reasonably project certain land use changes and urbanization patterns relevant to the pygmy-owl and its habitat. The majority of existing projections of urbanization and population growth within the geographic range of the pygmy-owl extend to 2050. Because urbanization and development are some of the primary drivers of habitat loss and fragmentation, we extended our analysis as far as we could reasonably project these changes and the subspecies' response to those changes. Additionally, the average lifespan of a pygmy-owl is 3 to 5 years. Thus, over a 30-year timeframe, we would expect 8 to 10 generations of pygmy-owls to be produced, which should be an adequate amount to assess the long-term effects of both threats and conservation actions. Because the primary avenue through which pygmy-owls move across the landscape is through the dispersal of juveniles, it can take multiple generations to provide adequate exchange of individuals to elicit detectable changes at the population group and analysis unit scales. Including multiple generations of pygmy-owls also allows adequate time to account for lags in demographic factors resulting from changes in environmental conditions. Therefore, we conclude that this number of generations is sufficient to assess the effective levels of resiliency, redundancy, and representation.

Monitoring of pygmy-owl occupancy and productivity also indicates that, at least in Arizona and northern Sonora, 30 years is an adequate time period to document abundance cycles driven by climate conditions. Monitoring in both Arizona and northern Sonora from the mid-1990s to the present time showed a period of decline in occupancy and productivity, primarily due to drought, followed by an increase in productivity and occupancy during years of better precipitation such that abundance and occupancy recovered to nearly the original levels (Flesch et al. 2017, p. 12; Ingraldi 2020, pers. comm.; Service 2022a, entire). For more information on the models and their projections, please see the SSA report (Service 2022a, entire). Below, we also identify which of the five listing factors identified in the Act are influencing the pygmy-owl under each future scenario.

Under Scenario 1 (continuation of current trends), we projected no significant changes to the rate of habitat loss and fragmentation within the subspecies' range (Factor A). For this scenario, we considered that climate change would track Representative Concentration Pathway (RCP) 4.5, which is one of four alternative trajectories for carbon dioxide emissions set forth by the International Panel on Climate Change (IPCC 2014a, pp. 8–9). Specifically, RCP 4.5 is an intermediate scenario where carbon dioxide emissions continue to increase through 2040, but then stabilize and begin to decline. This scenario would result in atmospheric carbon dioxide levels between 580 and 720 parts per million (ppm) between 2050 and 2100, well above current rates of approximately 415 ppm, and would represent an approximately 2.5 °Celsius (C) increase in global mean temperature relative to the period 1861—1880 (IPCC 2014a, p. 9) (Factor E). We also considered that current conservation efforts, such as captive rearing, would continue to be limited in their efficacy, due to limited resources for agencies and other conservation partners to expand implementation. However, we would expect conservation efforts to improve modestly with continued efforts to identify appropriate and effective methodologies and protocols that mitigate the primary limitations to the success of releasing captive-reared pygmy-owls. Additionally, climate change will continue to affect the suitability of conditions at release sites (poor habitat conditions, reduced prey availability, etc.) for captive-reared pygmy-owls, likely limiting the effectiveness of pygmy-owl releases unless those effects can be mitigated through project protocols (Factor E).

Under these conditions, we do not anticipate that any of the factors used to evaluate resiliency would improve and, in fact, vegetation intactness would be reduced due to continued development (Factor A). Northeastern Mexico is projected to maintain its current level of pygmy-owl abundance because, relative to the current condition, substantial changes to habitat conditions are not expected, primarily because our analysis indicates reduced impacts from climate change on remaining habitat relative to other analysis units. Because of this, the northeastern Mexico analysis unit is expected to maintain a moderate level of population resiliency under this scenario. Conditions in the Arizona analysis unit would continue to decline due to continued habitat fragmentation and climate change (Factor A), and resiliency would remain low. Resiliency in the remaining three analysis units, northern Sonora, western Mexico, and Texas, would decline due to continued loss of pygmy-owl habitat, reduced habitat intactness, and a reduction in cover and prey availability for cactus ferruginous pygmy-owls (Factor A). Overall, current levels of population redundancy and representation would be maintained rangewide, but at a reduced rate. All analysis units would remain occupied; however, representation within each analysis unit would likely decline at the population-group scale.

Under Scenario 2 (worsening or increased effects scenario), we projected increased rates of habitat loss and fragmentation when compared to the current condition and over and above that projected under Scenario 1, leading to a decline in pygmy-owl habitat conditions (Factor A). For this scenario, we considered that climate change would track RCP 8.5, which is the highest greenhouse gas emission scenario. Under this scenario, atmospheric carbon dioxide concentrations are projected to exceed 1,000 ppm between 2050 and 2100 and would represent a 4.5 °C increase in global mean temperature (IPCC 2014a, p. 9) (Factor E). We also assumed that conservation efforts that are currently underway would not be effective or would not be implemented.

Increased habitat loss and fragmentation would result in the greatest effect on overall resiliency through a reduction in abundance and occupancy of pygmy-owls. Increased development and urbanization would result in increased permanent losses of habitat (Factor A). Indirect effects to vegetation and prey availability as a result of climate change would also occur (Factor E). Due to increased habitat fragmentation, such as agricultural development, as well as a reduction in vegetation health from drought (Factor A), resiliency in the western Mexico analysis unit is projected to decline. Under this scenario, climate change and increased habitat fragmentation from urbanization and agricultural development lead to the loss of some population groups within the Texas, Arizona, and northern Sonora analysis units (Factor A, Factor E). The resultant decline would decrease representation and redundancy within these analysis units. In particular, the Texas and Arizona analysis units would become more vulnerable to extirpation because of low

pygmy-owl abundance and occupancy driven by reduced habitat quality as a result of drought and high levels of habitat fragmentation from ongoing urbanization and agricultural development (Factor E, Factor A). Genetic representation would be reduced through the loss of population groups or analysis units and the subsequent reduction of gene flow (Factor E). Overall, there would be a reduction in resiliency, representation, and redundancy within most analysis units, and the likelihood of maintaining long-term viability would be considerably reduced.

Under Scenario 3 (improving or reduced effects scenario), we project that habitat loss and fragmentation would continue, but at a reduced rate (Factor A). For this scenario, we considered that climate change would track RCP 4.5 (Factor E), and conservation efforts that are currently underway would be effective. We did not include other planned conservation efforts in this scenario because we are not aware of any that would significantly influence the viability of the subspecies.

Despite effective conservation actions in portions of the range, the viability of pygmy-owl populations would continue to decline within all five analysis units due to the ongoing effects of habitat loss, fragmentation, and climate change (Factor A, Factor E). The positive effects of conservation actions would remain localized, and the negative effects of the ongoing threats would outweigh these local benefits to individual population groups at the scale of the entire analysis unit. Resiliency would remain low in the Arizona analysis unit and would decline in both the northern Sonora and western Mexico analysis units due to a reduction in habitat quality as a result of climate change (Factor E). We would expect pygmy-owl habitat fragmentation from urbanization, deforestation, and agricultural development (Factor A) to continue under this scenario, though at a slower rate because of increased efforts to address the impacts from climate change and to improve land use decisions, as well as implementing habitat-related conservation actions. Resiliency would remain in moderate condition for the Texas and northeastern Mexico analysis units. Although habitat conditions are expected to continue to decline due to drought and climate change (Factor E), we do not expect a large decline in pygmy-owl occupancy and abundance in Texas and northeastern Mexico. Under this scenario, each analysis unit remains occupied and contributes to the representation and redundancy across the range of the pygmy-owl. However, within each analysis unit, threats continue, albeit at a reduced rate, and the resiliency of population groups would decline in three of the five analysis units. Thus, within analysis units, representation and redundancy is likely to decrease at the population-group scale.

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 individual effects on the subspecies 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 subspecies. To assess the current and future condition of the subspecies, 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 subspecies, 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 subspecies, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

In this section, we discuss regulatory mechanisms and conservation actions that potentially have influenced or will likely influence the current and future viability of the cactus ferruginous pygmy-owl.

Federal Protections

The pygmy-owl is protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). The MBTA prohibits ''take'' of any migratory bird. However, unlike the Act, there are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of an active nest also occurs. Approximately 31 percent of the pygmy-owl's historical geographic range in the United States is federally owned, with federally-owned lands making up approximately 40 percent of pygmy-owl habitat in Arizona. However, a substantial extent of the known currently occupied habitat occurs on State Trust lands in Arizona and on private lands in Texas. Other Federal regulations and policies such as the Clean Water Act (33 U.S.C. 1251 *et seq.*), the military's integrated natural resources management plans (INRMPs, such as the one for the Barry M. Goldwater Range) (Uken 2008, pers. comm.), and National Park Service policy provide varying levels of protection, but they have not, to this date, been effective in protecting the pygmy-owl from further decline as National Park Service owned lands comprise only a small portion of the range of the pygmy-owl.

Regulations under and implementation of the Clean Water Act help provide protections for a range of riparian habitat that is important to the pygmy-owl. Court actions and changes in regulations have decreased the potential scope of protections for riparian habitats within the range of the pygmy-owl. The 2006 *Rapanos* Supreme Court decision restricts the linear extent of jurisdiction to watercourses having a ''significant nexus'' with a Traditionally Navigable Water. This means that after the Court's decision was implemented starting in 2008, fewer watercourses were deemed jurisdictional. This ruling has had the effect of further reducing past protections of riparian habitats. This limitation in the extent of federal jurisdiction particularly affected ephemeral streams in the pygmy-owl's Arizona habitat. Based on the individual approved jurisdictional determinations in Pima County by the U.S. Army Corps of Engineers, it is likely that most of the Avra-Altar system, which supports pygmy-owl occupancy, will be found to lack significant nexus to the Colorado River system, which means that these habitats will not receive the same analysis and protection that they received in the past under the Clean Water Act (Meltz and Copeland 2007, entire; Keith 2007, entire).

As a result of the implementation of the 2005 Real ID Act (Division B of Pub. L. 109–13), the U.S. Department of Homeland Security (DHS) has waived application of the Act and other environmental laws in the construction of border infrastructure, including areas occupied by the pygmy-owl (73 FR 5272, January 29, 2008). As recently as 2020, DHS waived environmental compliance for the construction of border walls along the U.S.-Mexico border in Arizona and Texas (Fischer 2019, unpaginated; USCBP 2020, unpaginated). Consequently, pygmy-owl habitat has been lost and fragmented along most of the border area in Arizona, as well as in Texas. Of particular concern is the potential for border infrastructure to reduce habitat connectivity into occupied pygmy-owl habitat in Mexico (Flesch et al. 2010, pp. 177–179).

State Protections

The pygmy-owl is included on the State of Arizona's list of species of concern (AGFD 2021a, p. 16). Arizona statutes (ARS Title 17) only protect individual pygmy-owls and their nests or eggs and do not address destruction or alteration of pygmy-owl habitat. The State of Texas lists the pygmy-owl as threatened (Texas Administrative Code, title 31, part 2, chapter 65, subchapter G, rule 65.175; TPWD 2009, unpaginated; TPWD 2022, unpaginated). This designation allows permits to be issued for the taking, possession, propagation, transportation, sale, importation, or exportation of pygmy-owls if necessary to properly manage that species but, similar to Arizona, does not provide any habitat protections (Texas Park and Wildlife Code, chapter 67, section 67.0041).

Texas and Arizona state law prohibit any take (incidental or otherwise) of state-listed or protected species. In both states, species may only be handled by persons possessing a scientific activity permit, scientific permit for research, or other form of authorization from the State. While state laws in both Texas and Arizona prohibit the capture, trap, take, or kill, or attempt to capture, trap, take, or kill of protected wildlife, like the pygmy-owl, they provide no protection to their habitats.

Protections in Mexico

Within Mexico, the distribution of owls is large and includes multiple States. The administration of land use in Mexico depends on the national government, which implements Natural Protected Areas and other Federal programs, and also the policies of each State and even municipal governments (Enríquez 2021, pers. comm.). This system represents a wide range of management, conservation, and natural resource use approaches that affect pygmy-owl conservation, resulting in inconsistent policies and inconsistent implementation of conservation activities. No laws or regulations in Mexico specifically protect pygmy-owls and pygmy-owl habitat. Further complicating the conservation of the pygmy-owl in Mexico is the sheer diversity of entities involved in managing land use in Mexico, each with its own mission, goals, and objectives, many of which are not related to natural resource conservation. Thus, development and application of regulations and land-management activities that promote the conservation of pygmy-owls in Mexico is difficult and exceedingly complicated (Enríquez 2021, pers. comm.).

Conservation Efforts

Cactus ferruginous pygmy-owl conservation activities have occurred sporadically over the past three decades in both the United States and in northern Sonora in Mexico. Initial conservation efforts developed effective and safe protocols for studying the cactus ferruginous pygmy-owl and on gathering basic life-history information. Efforts expanded in the late 1990s and early 2000s to include important pygmy-owl work in Arizona, Texas, and northern Sonora. For the past two decades, studies have been irregular and focused primarily on monitoring known territories, although work continues on the pygmy-owl captive-breeding pilot project, as described below.

Surveying and Monitoring

AGFD initiated surveys to determine the extent of cactus ferruginous pygmy-owl occurrences in Arizona in 1992, when the cactus ferruginous pygmy-owl was first petitioned to be listed under the Act. Survey and monitoring work by a variety of entities continued through 2006, when the subspecies was delisted. Prior to delisting, survey and monitoring efforts were focused within Pima and Pinal Counties to document the occupancy pattern of cactus ferruginous pygmy-owls in areas of land use changes, primarily urban development. After the pygmy-owl was delisted in 2006, Service and AGFD biologists continued to conduct a small number of monitoring surveys. In 2020, AGFD coordinated a comprehensive survey effort within the recently occupied areas of Arizona, with the help of numerous partners, to gather data on the current abundance and distribution of the cactus ferruginous pygmy-owl in Arizona to inform this listing decision. Specifically, this effort included surveys to document distribution, territory occupancy monitoring, and some nest searches to document reproduction. This latest effort provided data on current distribution of the pygmy-owl in Arizona and the number of occupied territories, as well as some information on the number of active nesting territories (Ingraldi 2020, pers. comm.; AGFD 2021b, pers. comm.). These data are incorporated into the SSA report. However, these efforts did not provide any information on productivity or survival at these sites. Despite the changing regulatory environment and inconsistent availability of resources, survey and monitoring activities provide important information on the abundance and distribution of pygmy-owl across its range and, with that information, managers can more effectively and efficiently work to conserve the pygmy-owl.

Nest Box Trials

Because cactus ferruginous pygmy-owls are secondary cavity nesters (birds that nest in cavities excavated by other bird species), the number of available cavities may influence the viability of cactus ferruginous pygmy-owls on the landscape (Proudfoot 1996, p. 68). Using nest boxes as a management tool may enhance the viability of cactus ferruginous pygmy-owls by increasing cavity availability and reducing predation. Nest boxes also enhance access to the owls during nesting, which facilitates research. Research in Texas demonstrated successful use of artificial nest structures by cactus ferruginous pygmy-owls (Proudfoot et al. 1999, pp. 5–6). In response to concerns about cavity availability, two nest box trials were conducted in Arizona in 1998 and 2006. No cactus ferruginous pygmy-owls used the nest boxes in these studies, but low cavity availability was confirmed based on high use of the nest boxes by other species, including screech owls. No additional nest box studies have been undertaken in Arizona, and the nest box study in Texas is no longer active. The information on nest box use in Texas has contributed to the conservation of the pygmy-owl in Texas. Additional research is needed in other parts of the pygmy-owl's range to understand the effectiveness, or lack thereof, of using nest boxes as a conservation tool for pygmy-owls.

Captive-Breeding and Population Augmentation

The AGFD initiated a pygmy-owl captive-breeding feasibility study in partnership with the Wild at Heart raptor care facility in Cave Creek, Arizona, in 2006. Since then, Wild at Heart has researched and tested protocols for a managed breeding program for cactus ferruginous pygmy-owls. In 2017, the Phoenix Zoo became the second captive-breeding site for pygmy-owls in Arizona and part of the managed breeding program when it entered into partnership with the Service and the AGFD. Both the AGFD and the Service oversee this program.

The goal of the managed breeding program for the cactus ferruginous pygmy-owl is to develop appropriate protocols for the husbandry and breeding of captive pygmy-owls to provide individuals to augment existing population groups or establish new population groups in areas where suitable habitat exists in Arizona (AGFD 2015, entire). To date, these efforts have

demonstrated: (a) Successful capture and transport of wild cactus ferruginous pygmy-owls; (b) safe, healthy, and stress-free captive facilities; (c) the development of appropriate care, feeding, and maintenance protocols; (d) successful breeding; and (e) appropriate care and development of young-of-the-year birds. Three pilot releases of captive-bred pygmy-owls have been implemented since the inception of this program. This effort establishes the first formal captive-breeding for the subspecies and provides the groundwork for evaluation of this strategy in wild cactus ferruginous pygmy-owl population augmentation. These pilot releases have not resulted in the establishment of new pygmy-owl territories or population groups, but they have contributed valuable information to developing appropriate release strategies and protocols to improve the potential for conservation benefits to the pygmy-owl in the future. For example, high mortality rates of released captive-bred pygmy owls as a result of weather, prey availability, predation, habitat conditions, and lack of pre-release conditioning all likely contributed to past failures. However, an adaptive management approach is being used to address such mortality factors and improve methodology. The partners involved in this project are committed to the continuation of this effort into the future.

Conservation Planning

When the pygmy-owl was listed previously, several municipalities located within current or historical pygmy-owl activity areas explored or implemented habitat conservation plans (HCPs) under the Act to address potential conflicts between development projects and requirements of the Act. These HCP plans included the Sonoran Desert Conservation Plan (Multi-Species Conservation Plan) developed by Pima County (Pima County 2016, entire), the Town of Marana HCP (Town of Marana 2009, entire), and the City of Tucson's Avra Valley (City of Tucson 2019, entire) and Southlands HCPs (City of Tucson 2013, entire). Each of these four HCP efforts identified the cactus ferruginous pygmy-owl as one of the covered species within their plans. However, most of these plans have yet to be completed: to date, only the Pima County HCP has been completed and implemented. Pima County is currently conducting ongoing surveys and monitoring of pygmy-owl territories on county-managed lands and has set aside pygmy-owl habitat as part of their conservation-lands system in compliance with their HCP. The establishment of these conservation lands is an important contribution to pygmy-owl conservation in Pima County, but continuing efforts are needed to address other threats such as habitat impacts from climate change. Pima County's efforts are expected to continue for the 30-year life of their permit (through 2046) and longer if the County renews the permit.

Another ongoing conservation planning effort that has the potential to support pygmy-owl conservation in the Altar Valley of southern Arizona is the Altar Valley Watershed Management Plan. This plan (being developed by the Altar Valley Conservation Alliance with numerous partners and participants) builds upon existing efforts within the Altar Valley to restore and enhance the watershed. The plan will describe stewardship practices and identify a series of high-priority projects that maximize positive impacts on the land. Projects related to watershed restoration have already been implemented at three ranches in the Altar Valley. These projects have included one-rock dams and other structures to stabilize waterways, road grading to promote water harvesting, and enhancement of grasslands through invasive species control to promote infiltration and reduce runoff and sedimentation. These actions improve vegetation health through increased water infiltration and reduced loss of soil and vegetation due to erosion. These benefits improve riparian vegetation along drainages enhancing pygmy-owl habitat conditions and connectivity. Ranches within the Altar Valley of southern Arizona have maintained open space and contributed to the conservation of pygmy-owls for over 20 years. Overall, the conservation planning efforts implemented to date have contributed to the conservation of the pygmy-owl through protecting or enhancing important pygmy-owl habitat in Arizona and providing a path towards long-term habitat viability and maintenance.

In Mexico, Federal, State, and municipal protected areas comprise approximately 11 percent of the historical pygmy-owl range in Mexico. These areas can work well as conservation strategies for the cactus ferruginous pygmy-owl. There is now a new option for protected areas called Voluntary Conservation Areas (Áreas Destinadas Voluntariamente a la Conservación; ADVA), which are areas identified for conservation. These ADVA could be a potential conservation strategy for the pygmy-owl in the future with improved design, management, and enforcement (Burquez and Martinez-Yrizar 1997, p. 378; Valdez et al. 2006, p. 272; Burquez and Martinez-Yrizar 2007, p. 546; Enríquez 2021, pers. comm.).

Summary of Comments and Recommendations

In the proposed rule published on December 22, 2021 (86 FR 72547), we requested that all interested parties submit written comments on the proposal by February 22, 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 Arizona Daily Star and Corpus Christi Caller-Times. We held a public hearing on January 25, 2022. All substantive information received during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Peer Review above, we received comments from three peer reviewers. We reviewed all comments we received from the peer reviewers, including comments on substantive issues and new information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the final SSA report as appropriate.

(1) Comment: One peer reviewer commented that the construction of the border wall will cause substantive ecological damage and function as a barrier to many terrestrial animals. However, the peer reviewer finds the idea that the border wall would be an impediment or barrier to pygmy-owls to be unfounded.

Our response: No studies have specifically looked at how border walls and associated infrastructure may affect pygmy-owl movements. We do not currently know if these structures will be a barrier or an impediment on pygmy-owls. However, observations in the field indicate that barriers similar to the border wall may affect pygmy-owl movement patterns. Pygmy-owl flight patterns are generally less than 30 m (100 ft) and typically only 1.5 to 3.0 m (5 to 11 ft) above the ground (Flesch and Steidl 2007, p. 35; AGFD 2008, pers. comm.). Flesch et al. (2010, pp. 7–9) show that the vegetation gaps, in association with the tall fences, may limit transboundary movements by pygmy-owls. The fences and vehicle

barriers along the border, when considered in conjunction with patrol roads, drag roads, and vegetation removal, result in a combination of unvegetated area with a raised structure in the middle causing an impediment to pygmy-owl movement. Observations reported in the literature show that pygmy-owls avoid crossing open areas associated with roadways (Abbate et al. 1999, p. 54; Flesch and Steidl 2007, pp. 6–7; Flesch 2017, p. 5; Flesch et al. 2017, entire; Flesch 2021, pp. 12–14). Given other known impediments to pygmy-owl movements, it is likely border infrastructure could affect cross-border movements by pygmy-owls, at least at some border locations. The SSA report discusses factors that logically could result in some impact to pygmy-owl cross-border movements. However, pygmy-owls are capable flyers and easily navigate small openings in their normal day-to-day behaviors. Pygmy-owls are sometimes observed very high in trees, at or above the height of border infrastructure. Therefore, the border wall itself may not affect all cross-border movements, depending on the crossing site characteristics. However, the border wall in conjunction with lighting, patrol and interdiction activities, and vegetation clearing present more factors potentially deterring pygmy-owl movements. This issue needs more research and monitoring to determine whether and how such border infrastructure affects pygmy-owl movements.

(2) Comment: A peer reviewer expressed concern in considering the eastern and western populations to be the same subspecies. The peer reviewer expressed concerns about considering each of these to be redundant populations because, with no evidence of interchange between the two populations, each population would be unable to provide rescue to the other population.

Our response: This issue was investigated by Proudfoot et al. (2006a, entire; 2006b, entire) and König et al. (1999, entire), who concluded the eastern and western populations may comprise two separate subspecies. This information, in combination with the historical descriptions of distributions for the subspecies *cactorum,* as discussed in the SSA report, provided some general evidence that reclassification of this subspecies could have merit. However, after reviewing the best available information, we find that the evidence of delineating the range of these subspecies is uncertain and inconsistent. Peer reviewers of our 2011 12-month finding pointed out that a combination of factors, including morphological, vocal, and genetic, need to be considered in greater depth, with additional sampling and analysis of existing samples, to determine if the petitioned taxonomic classification should be accepted, and we are in agreement with these comments.

Given the uncertainty and lack of clarification found in the best available scientific and commercial information, we rely on the ''biological expertise of the Department and the scientific community concerning the relevant taxonomic group'' (50 CFR 424.11(a)) and the ''standard taxonomic distinctions (50 CFR 424.11(a)). Additional genetic sampling and analysis in 2021 through AGFD, while providing additional samples and an updated analysis of Proudfoot et al.'s (2006a, entire, and 2006b, entire) work, did not provide compelling evidence to change our conclusions regarding the taxonomic classification of the cactus ferruginous pygmy-owl (Cobbold et al. 2022b, entire) (see also Background above). We do not yet have enough information to say whether pygmy-owls at the far ends of their distribution (Texas and Arizona) represent different subspecies, but the work by Cobbold et al. (2022b, entire) suggests there is likely some degree of redundancy between the eastern and western populations of the pygmy-owl at the southern end of the range. In other words, cactus ferruginous pygmy-owls in the southern portion of the range are more similar to each other than to pygmy-owls in the northern extremes of the range in Arizona and Texas. See also our response to comment 8 below.

(3) Comment: One peer reviewer pointed out that the influence diagram in the SSA report (figure 4.1) was missing some linkages and suggested careful consideration of additional linkages that may need to be added.

Our response: We acknowledge that there are numerous other connections not shown in the influence diagram in the SSA report. However, we have simplified the graphic to illustrate the most important influences on the subspecies. We have added the two additional connections suggested by the reviewer and added clarification in the SSA report acknowledging the complicated and interconnected nature of stressors, habitat, individuals, and population resiliency.

Federal Agency Comments

(4) Comment: The Forest Service stated that a critical habitat designation would help to define areas in which to restrict wood harvesting within the Coronado National Forest.

Our response: We will be publishing a proposed rule to designate critical habitat as a separate action and will solicit public comments on the critical habitat designation at that time. Our intent is to publish a proposed critical habitat rule within 1 year of this final listing rule.

Comments From States

(5) Comment: The Arizona Department of Forestry and Fire Management and the Arizona Department of Transportation expressed concerns about prohibitions on prescribed fire in the Sonoran Desert and thinning of woody plants, specifically as it relates to fire management, invasive species management, and for public safety along roadways. The Arizona Department of Transportation requested that vegetation management and brush removal within the recovery zone of roads and other strategic locations be included as an exception in the 4(d) rule.

Our response: We acknowledge and understands the importance of managing vegetation strategically along roadways and for fire and invasive species management that can promote the conservation of native species and their habitats. However, a broad exception under a 4(d) rule for such activities would prevent us from working with partners to conduct these activities in a way that minimizes effects to the pygmy-owl and its habitat. The design of projects such as these are dependent upon a number of site-specific factors requiring unique recommendations and approaches so that pygmy-owl-specific measures can be incorporated. We have a number of tools in place to reduce consultation workloads for action agencies, including programmatic consultations, which would allow for strategic planning of vegetation projects while allowing adequate planning and review. We look forward to the opportunity to work collaboratively with partners in Arizona and Texas to help conduct necessary vegetation management projects while also ensuring that effects to listed species are considered and minimized.

(6) Comment: The Texas Parks and Wildlife Department (TPWD) and Arizona Department of Transportation requested increased clarification for which habitat restoration projects would be excepted under the 4(d) rule.

Our response: We have provided additional clarity for which habitat projects are excepted under the 4(d) rule and which would require a section 7 consultation. This additional clarification can be found under Provisions of the 4(d) Rule below.

(7) Comment: The TPWD requested additional information regarding the potential to use the State permitting process for surveying and monitoring activities.

Our response: Discussion of this issue with TPWD has revealed they are only authorized to permit activities that involve direct handling of protected species, and, therefore, they do not permit the types of activities excepted under the 4(d) rule for pygmy-owls, according to Texas State Parks and Wildlife Code (Sec. 43.021). For this reason, we will still require a Federal section 10 permit for pygmy-owl activities in Texas.

(8) Comment: The Texas Comptroller of Public Accounts and the AGFD questioned the validity of the subspecies' taxonomy and stated that the Service should first address the taxonomic uncertainty prior to making a listing decision.

Our response: As discussed in Background and *Peer Reviewer Comments,* above, and extensively in the SSA report (Service 2022a, Section 2.1–2.2), we rely on the currently accepted taxonomy when making listing decisions. Although there have been proposed revisions to the pygmy-owl taxonomy, these revisions have not been accepted by the American Ornithological Society, the recognized authority for avian taxonomic classification. Therefore, we have analyzed the cactus ferruginous pygmy-owl as currently described (*Glaucidium brasilianum cactorum*).

(9) Comment: The Texas Comptroller of Public Accounts stated that pygmy-owl habitat in Texas makes up only five percent of the range of the subspecies and that the population there is most likely secure. They also state that the population in Texas is greater than that of Arizona.

Our response: When analyzing the status of a species throughout its range, we do not focus only on the portions of the species' range within one State. Therefore, the percentage of the range within each State in a species' range is not directly relevant to its status throughout its range. We agree that the population in Texas is likely greater than that in Arizona and have acknowledged that fact in this rule. Although populations in one State may be higher than another, we analyze the status of the species throughout all or a significant portion of its range when making listing decisions. We rely on the current and future conditions, and the threats and stressors acting on the species and its habitat, to determine whether or a not a species is in danger now or likely to become endangered in the foreseeable future throughout all, or a significant portion of its range, not within each State in which it occurs. Although pygmy-owls in Texas still occur within rural private lands, much of the range of the pygmy-owl in Texas has been developed and connectivity to Mexico has been significantly reduced. The pygmy-owl has been listed as a Species of Greatest Conservation Need by TPWD since 2005, and in 2020, TPWD downgraded the ranking of the subspecies from vulnerable to imperiled. TPWD, the State authority for managing the wildlife in Texas, was closely involved in the development of the SSA for the pygmy-owl and provided data for this species in Texas. For these reasons, we do not conclude that the species is secure in Texas for the foreseeable future.

(10) Comment: The Texas Comptroller of Public Accounts stated that the information used in the SSA report may have been best available but was incomplete and outdated. They stated that the Service should not make a listing decision without robust population and habitat data.

Our response: When making listing decisions, we are required to rely on the best available information. The Act does not require that we conduct our own research and monitoring before making a listing determination. Often, we are required to make listing decisions based on incomplete or outdated information, as many of the species we analyze are rare and it is difficult to get adequate sample sizes for study or analysis. For these reasons, many of these species are not thoroughly studied. We do not delay providing protections to species while awaiting additional data and, while we would welcome new information not included in our SSA report, to date our analysis includes the best available information for the pygmy-owl.

(11) Comment: The AGFD and other commenters stated that the Service did not provide adequate support linking projected future human population growth to direct effects to the status of the pygmy-owl. The commenters stated that the Service needed direct information related to the subspecies' status before, during, and after this human population growth to demonstrate an effect to the subspecies.

Our response: We acknowledge that we do not have an extensive set of quantified empirical data for a detailed analysis of the effects of urbanization and development on pygmy-owls and pygmy-owl habitat. There have been no specific studies quantifying the effects to pygmy-owls and their habitat from urban development. However, as presented in Appendix 6 of the SSA Report (Service 2022a, Appendix 6), the data we have indicate that substantial areas of habitat within the range of the pygmy-owl have been lost due to urban growth and development (approximately 100,000 acres cumulatively in the Arizona and Texas analysis units over the past 10 years), and it is reasonable to predict that such loss will continue as population growth and development patterns trend upward into the future and more suitable habitat is converted for urban development. We used the best available information on population growth and development projects to project potential losses of pygmy-owl habitat into the future.

Additionally, in response to a comment we received during the public comment period, we completed additional analysis on land cover changes within pygmy-owl habitat in Texas and Arizona over the past decade (2010–2020). The commenter provided an analysis on changes in land cover within the pygmy-owl analysis areas during the time period of 2010–2015 and suggested that the impacts to pygmy-owl habitat were not as great as we presented in the proposed rule and SSA report. The commenter's data sources were different than what we used in the SSA, but the commenter presented a reasonable issue with regard to the data presented. Because it is important to consider the scope, scale, and the factors included in different sources of data, we conducted additional analysis using data sources that provided the same type of data that the commenter used in their analysis. This allowed us to compare the results of additional sources of data with the results presented by the commenter. This additional analysis provides different results than presented by the commenter, but this outcome is expected because of differing time periods, categories of land cover and land use, and the scope and scale of the data.

Both analyses provide useful information to consider as we evaluate the status of the pygmy-owl. Neither analysis changed the outcome of our listing decision or our assessment of the effects of human population growth on the pygmy-owl. Our analysis showed greater impacts to pygmy-owl habitat than the data provided by the commenter and supported our finding that some areas of pygmy-owl habitat have been lost or modified and habitat fragmentation has continued, at least in Texas and Arizona, during this time period. Our further analysis related to the impacts of various land uses on pygmy-owl habitat over the past decade

can be found in appendix 6 of the SSA report (Service 2022a, appendix 6).

(12) Comment: The AGFD claimed that agricultural development should not be considered a current threat to the pygmy-owl in Arizona as the effects of agricultural development occurred primarily historically.

Our response: Agricultural development was primarily a historical threat to the distribution of pygmy-owls in Arizona (Stromberg 1993, pp. 117–119; Jackson and Comus 1999, pp. 215–255). However, agricultural development is still a local impact to pygmy-owls in Arizona and is impacting habitat connectivity and pygmy-owl movements in some parts of Arizona, primarily in Pima and Pinal Counties (Service 2022a, Appendix 6). Additionally, agricultural development is currently resulting in ongoing pygmy-owl habitat loss and fragmentation in Texas and in all the analysis units in Mexico. The best available information indicates it is a current and projected threat to pygmy-owl habitat.

Public Comments

(13) Comment: One commenter stated that the Service did not explain why the proposed 4(d) rule was not analyzed under the National Environmental Policy Act.

Our response: As stated under *National Environmental Policy Act (42 U.S.C. 4321 et seq.)* below and in the proposed rule, 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)).

(14) Comment: Two commenters stated that grazing is not beneficial nor adequately managed and should not be included in the 4(d) rule.

Our response: As discussed in the proposed rule, we considered mechanisms to ensure livestock grazing is conducted in a manner that promotes the conservation of the pygmy-owl. While developing our proposed rule, we determined that livestock grazing requires local management that can address the specific conditions of each individual operation and, therefore, including a broad, general exception for grazing within the 4(d) rule would not be beneficial to the subspecies. We are not currently allowing any exceptions from section 9 prohibitions for livestock grazing. Therefore, future livestock grazing actions with a Federal nexus that may affect the pygmy-owl will require a section 7 consultation with the Service.

(15) Comment: One commenter requested clarification of the phrase ''accelerate the time horizon'' that was used in our discussion of the concentration of threats within the Sonoran Desert Ecoregion.

Our response: To provide additional clarity, we have removed the statement ''accelerate the time horizon'' from our discussion in *Status Throughout a Significant Portion of Its Range* below. In summary, we found that the Sonoran Desert Ecoregion has a concentration of threats to the pygmy-owl; however, we determined that these threats did not rise to the level of those that would place the pygmy-owl in danger of extinction now in that portion of its range. Therefore, we determined that the pygmy-owl's status within the Sonoran Desert Ecoregion is the same as the rangewide status of threatened.

(16) Comment: One commenter stated that the Service did not conduct a regulatory flexibility analysis for the 4(d) rule to determine if the proposed action would affect small entities. The commenter stated that the issuance of a 4(d) rule is a distinct regulatory action from the listing of a species under section 4(a) of the Act.

Our response: In 1982, Congress added to the Act the requirement that classification decisions be made ''solely on the basis of the best scientific and commercial data available.'' In addition, the Conference Report accompanying those amendments made clear that one purpose of adding that language was to ensure that requirements like those in E.O. 12866 do not apply to classification decisions. Specifically, it states that economic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291 [the predecessor of E.O. 12866], and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, will not apply to any phase of the listing process. H.R. Conf. Rep. No. 97–835, at 20. Section 4(d) requires that the Service issue regulations deemed necessary and advisable to provide for the conservation of a species whenever any species is listed as a threatened species. We consider this 4(d) rule to be a necessary and advisable phase of the listing process to put in place protections for this threatened species.

(17) Comment: Two commenters stated that the proposed rule did not explain the need to extend all section 9 prohibitions for endangered species to the pygmy-owl and did not adequately explain why the 4(d) rule was necessary and advisable.

Our response: As discussed in Final Rule Issued Under Section 4(d) of the Act below, in promulgating regulations under section 4(d) of the Act, we have broad discretion to select appropriate provisions tailored to the specific conservation needs of threatened species. The second sentence of section 4(d) 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 9(a)(2), in the case of plants.'' The use of the word ''may,'' along with the absence of any specific standards, in the second sentence grants us particularly broad discretion to put in place prohibitions with respect to threatened species that section 9 prohibits with respect to endangered species. We have found that in most cases, it is necessary and advisable to apply to a threatened species: (1) all of the general prohibitions that apply to endangered species under section 9 and then (2) tailor the exceptions to those prohibitions to address the specific conservation needs of the species. We often lack a complete understanding of the causes of a species' decline and affording a threatened species protections that are similar to the protections for an endangered species should help provide the necessary tools over time as we learn more about the species' status and threats. In this instance, we have determined that it is necessary and advisable to extend all section 9 prohibitions to the pygmy-owl (see Final Rule Issued Under Section 4(d) of the Act below) and that doing so accomplishes our goal of putting in place protections that will both prevent the species from becoming endangered and promote its recovery. As new information becomes available, we have the option to revise species-specific rules accordingly.

(18) Comment: We received several comments pertaining to critical habitat designation for the pygmy-owl.

Our response: We are working on a proposed critical habitat rule and will address comments pertaining to critical habitat designation during the public comment period for that proposed rule.

(19) Comment: Two commenters stated that a court determined the Service's interpretation of the phrase ''significant portion of its range'' was unlawful (*Ctr. For Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946 [D. Ariz. 2017]; 248 F. Supp. 3d at 955–58), and in the vacatur and remand of the 2011 pygmy-owl finding (76 FR 61856, October 5, 2011), the court's ruling addressed only the ''significant portion of the range'' policy and that, on remand, the Service did not need to address any other aspect of the 2011 finding.

Our response: The court's decision in 2017 vacated and remanded the entire 12-month finding. Additionally, in the 10 years since our previous decision, there has been new information, as outlined in Summary of New Information Since 2011 Finding. Therefore, we were required to revisit our previous finding and assess all new information to ensure we are making a listing determination based on the best available information.

(20) Comment: Two commenters indicated that the Service included no information regarding recent, specific rangewide habitat losses that would cause pygmy-owl habitat conditions to have declined since the 2011 12-month finding.

Our response: As discussed in the SSA report (Service 2022a, chapter 7) and clarified in this rule, substantial new information on the status of the pygmy-owl has become available since our 2011 finding. Our analysis shows that, while the same threats may not be occurring in all analysis units, every analysis unit within the range of the pygmy-owl is experiencing ongoing threats. Threats in each analysis unit have resulted in past pygmy-owl habitat loss and are likely to result in additional pygmy-owl habitat loss and fragmentation into the future. It would not be reasonable to conclude that ongoing threats to habitat that demonstrably caused habitat losses in the past are not continuing to cause habitat losses now and into the foreseeable future. Additionally, we updated the threats section based on references and comments provided during the public comment period and on updated references found while developing our response to comments. Thus, we used the best available information to determine that, while most rangewide habitat losses are not caused by a single threat, the combination of threats in all analysis units results in rangewide impacts to pygmy-owl habitat.

(21) Comment: Two commenters interpreted the information found in the SSA report and proposed rule as indicating that pygmy-owl population estimates are greater in the proposed rule and SSA report than in the Service's 2011 12-month finding (76 FR 61856, October 5, 2011).

Our Response: The population estimates to which the commenters referred (Service 2022a, table 4.2) are not actual population estimates but, rather, an estimate of the general magnitude of pygmy-owl abundance within each analysis unit. Thus, these estimates of the magnitude of abundance in the SSA should not be interpreted as precise population estimates, but rather as a tool to compare the general abundance of pygmy-owls in each analysis unit. As explained in the SSA report, we lack actual, quantitative pygmy-owl abundance data, even in those analysis units where some survey and monitoring activities have occurred. The actual abundance of pygmy-owls is unknown for every analysis unit, particularly for the western Mexico and northeastern Mexico analysis units. However, the best available information indicates that abundance, distribution, or both have declined in the three analysis units where survey and monitoring data do exist (Arizona, Texas, and Northern Sonora), and anecdotal information suggests this is true for the other analysis units in Mexico. We have clarified this point in the SSA report (Service 2022a, Section 6.2) and this final rule (see *Summary of Current Condition of the Subspecies*).

(22) Comment: Several commenters pointed out that listing the pygmy-owl is not warranted because nearly 90 percent of the pygmy-owl's range is in Mexico, where the subspecies is considered common and faces few serious threats.

Our response: While the majority of the pygmy-owl's overall geographic range is found in Mexico, the owls and owl habitat in the United States contributes to the viability of the subspecies as a whole, and it is on the overall viability of the subspecies that we make listing determinations. We used the best available information to estimate the magnitude of pygmy-owl abundance; while we estimate that the pygmy-owl occurs in higher densities in the western Mexico and northeastern Mexico, we have the least information on pygmy-owl abundance and density from these areas of the range. Additionally, the pygmy-owls in those regions face a number of serious threats, such as urbanization, deforestation, and climate change. As described in the SSA report (Service 2022a, entire) and this final rule, we find that the best available information supports our finding that, while the threats may vary across the range of the pygmy-owl, there are substantial threats affecting the pygmy-owl's viability in all five of the described analysis units, including the three analysis units found in Mexico.

(23) Comment: Two commenters stated that pygmy-owls in Arizona should be listed as endangered, either due to a significant portion of the range in Arizona being endangered or as a distinct population segment (DPS). One commenter believed that the population in Arizona is isolated from Sonora and may be discrete. They also stated that Arizona should qualify as a DPS due to its unusual ecological setting.

Our response: There are innumerable ways to divide up a species' range; however, we only analyze configurations that we find may meet the definition of a DPS or a significant portion of the range. We analyzed multiple potential configurations for both a significant portion of the range and DPS but discussed in the proposed rule only those that we felt were reasonable under our policy and guidance.

We determined that Arizona does not constitute a significant portion of the range of the pygmy-owl because it makes up only 12 percent of the total pygmy-owl range, contains a small proportion of the total number of pygmy-owls, and contains a similar habitat to that found elsewhere in the range. See *Status Throughout a Significant Portion of Its Range* for our full analysis.

We also found that Arizona is not a valid DPS. Under our DPS policy, a population must be both discrete and significant to be considered a DPS. We agree that under our DPS policy (61 FR 4722, February 7, 1996) the pygmy-owl in Arizona would likely meet the discreteness condition through the presence of the international border. However, the Arizona population of pygmy-owls does not meet the significance requirement. Under this condition, we assess the biological and ecological significance of the population and can consider, among other factors, a population segment in an ecological setting unusual or unique for the taxon, evidence that the loss of the discrete population would result in a significant gap in the range, evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or evidence that the discrete population segment differs markedly from other populations of the subspecies in its genetic

characteristics. There is no evidence that the Arizona population is genetically separate from the remainder of the range. This population does not occur in a unique or unusual setting as it has a similar ecological setting to habitat in Northern Sonora, comprising primarily Sonoran Desert vegetation. The loss of the Arizona population would create a gap in the range of the pygmy-owl, but not a significant one. Because this population is on the northern extreme of the pygmy-owl range, the gap that would result would be on the periphery of its range. While the court acknowledged the presence of this gap in the range, it found that this gap would not be significant to the species as a whole and we agree based on the best available data. In looking at the best available data and considering the pygmy-owl population segment in Arizona, we determined that it does not meet the significance condition of our DPS policy. For additional discussion of our DPS analyses see, *Distinct Vertebrate Population Segment* below. For an in-depth discussion of the DPS analysis for Arizona, see also our final rule to delist the Arizona DPS of the pygmy-owl (71 FR 19452, April 14, 2006).

(24) Comment: We received several comments stating the pygmy-owl is endangered in the Sonoran Desert ecoregion, which constitutes a significant portion of the range of the pygmy-owl. One commenter stated that the Service should have analyzed the eastern and western populations of the pygmy-owl as a DPS, and we should have then found the Sonoran Desert was a significant portion of the range of the western DPS.

Our response: To clarify our analysis of whether it would make sense to separately analyze a potential eastern and western population DPS, we have added additional discussion under *Analysis of Potential Distinct Population Segments,* below. Although the Sonoran Desert ecoregion is a unique ecological setting, this region does not have a different status from the rest of the range. We have determined that the subspecies is in danger of extinction in the foreseeable future throughout its range. Therefore, when examining the populations in the Sonoran Desert Ecoregion, we looked to determine if this region had a different status from the rest of the range. The Sonoran Desert Ecoregion currently supports an abundance of pygmy-owls in the high hundreds and a moderate amount of intact, suitable vegetation (Service 2022a, chapter 6). Consequently, these factors are currently maintaining an overall moderate level of resiliency in this portion of the range. There is currently habitat connectivity with evidence of pygmy-owl movement among population groups, providing redundancy throughout the Sonoran Desert Ecoregion. Representation is currently being maintained through pygmy-owl occupancy of a variety of vegetation types throughout the Sonoran Desert Ecoregion with gene flow among these population groups. Although threats may be more concentrated in this region, this ecoregion is not in danger of extinction now, but is likely to become so in the foreseeable future and has the same status as the rest of the range. Therefore, we determined that, although the Sonoran Desert ecoregion has a concentration of threats and *may* constitute a significant portion of the range, the population of pygmy-owls there is not currently in danger of extinction and has the same status as the subspecies rangewide. When assessing a potential significant portion of the range, we can choose to first address the question of whether a portion has a different status than the species rangewide or whether a portion is significant. In this instance, we addressed the status question first and determined that the Sonoran Desert Ecoregion does not have a different status than the subspecies rangewide and, therefore, did not need to move on to address the question of significance of this portion. For additional discussion of our analyses see *Status Throughout a Significant Portion of Its Range* and *Distinct Vertebrate Population Segment* below.

(25) Comment: Several commenters stated they believed the pygmy-owl in the Sonoran Desert Ecoregion met the criteria for a DPS.

Our response: Our policy (61 FR 4722, February 7, 1996) requires that a DPS be markedly separate from other populations of the same taxon. There are no physical, geographic, or behavioral barriers that separate the petitioned Sonoran Desert DPS from the rest of the pygmy-owl's range to the south. Although there may be some impediments to movement in central Sonora, this situation does not prevent movements of pygmy-owls between northern and southern Sonora. Genetic differentiation is a result of isolation by distance. This finding is supported by genetic sampling (Cobbold et al. 2022b, entire; Proudfoot 2006a, entire). The Sonoran Desert Ecoregion does differ ecologically from the remainder of the areas within its range. However, as described above and in *Distinct Vertebrate Population Segment* below, the best available scientific and commercial data do not indicate that this ecological difference has resulted in any morphological, physiological, or genetic differentiation within pygmy-owl populations in the Sonoran Desert and that these populations are not markedly separated from populations to the south.

(26) Comment: One commenter requested that the Service clarify and justify criteria used to make decisions pertaining to distinct population segments and a significant portion of the range. Specifically, the commenter mentioned our discussion of the Sonoran Desert as a potential DPS whereby we assert that connectivity occurs between the Sonoran Desert ecoregion and southern Sonora, as evidenced by genetic sampling. The commenter requested additional clarification on how much restriction of gene flow would be required for these populations to be considered discrete. The commenter also requested the benchmarks used to determine whether a geographical extent was significant or not.

Our response: Neither the Act nor our regulations provide or require benchmarks or thresholds for determining whether a population or portion of the range should be considered a distinct population segment or a significant portion of the range. Our DPS policy (61 FR 4722) provides guidance for analyzing areas as potential DPSs; however, we have broad discretion to make science-based decisions on a species-by-species basis, including whether to analyze specific areas as potential DPSs or significant portions of the species' range. In this instance, the best available data show that there is enough genetic exchange between the Sonoran Desert ecoregion and southern Sonora to maintain gene flow (Proudfoot et al. 2006a, entire; 2006b, entire; Cobbold et al. 2022b, entire). For additional information on our DPS analysis, see our responses to comments 25 and 26. Because we determined that the Sonoran Desert Ecoregion does not meet the discreteness condition of our DPS policy (76 FR 61856, October 5, 2011), we did not further analyze its significance under the policy. For additional discussion of our analyses see *Status Throughout a Significant Portion of Its Range* and *Distinct Vertebrate Population Segment* below.

(27) Comment: One commenter stated that, under the most likely future scenario in the SSA report, the increased effects scenario, there would be a high probability of extirpation within the next 30 years in portions of the subspecies' range.

Our response: Given the complexity of and the limited data available on the future influences and subspecies' responses to those influences, we did not base our listing decision on any one scenario but rather considered the range of plausible future conditions and risk to the subspecies. Although we do acknowledge that threats to the subspecies are not consistent across the range, we have determined through our DPS and significant portion of the range analyses that those areas either do not meet the criteria for a DPS or significant portion of the range, or that the species is not currently in danger of extinction in any of those areas. See comments 25, 26, 27, and *Status Throughout a Significant Portion of Its Range* and *Distinct Vertebrate Population Segment* below.

(28) Comment: One commenter stated that the Service did not apply the five-factor test required by section 4(a) of the Act but instead used the three R's principles of resiliency, redundancy, and representation.

Our response: As discussed under Regulatory and Analytical Framework, we are required to determine if a species is an endangered species or threatened species because of any of the five factors listed in the Act. These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. However, the mere identification of a threat under one of these factors does not necessarily mean that a species meets the statutory definition of an endangered or threatened species. We must evaluate each threat and its expected effects on the species, and then analyze the cumulative effect of all the threats on the species as a whole. We examined the following threats to the cactus ferruginous pygmy-owl: Climate change and climate condition (Factor E), habitat loss and fragmentation (Factor A), human activities and disturbance (Factors B and E), waived or ineffective regulatory mechanisms (Factor D), human-caused mortality (Factors B and E), disease and predation (Factor C), and small population size (Factor E), and we determined that the primary threats to the subspecies are climate change and climate condition, and habitat loss and fragmentation.

The supporting Species Status Assessment (SSA) report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the subspecies, including an assessment of these potential threats to the subspecies. The SSA report does not represent our decision on whether the subspecies should be proposed for listing as an endangered or threatened species under the Act. In the SSA, we use the conservation biology principles of resiliency, redundancy, and representation to assess the viability of the subspecies. This biological assessment does not replace the additional application of the standards within the Act. Rather, it provides the scientific basis that informs our regulatory decisions, which involve the further application of the standards within the Act and its implementing regulations and policies. We found that, based on analysis in the SSA regarding the projected future condition of the species, the cactus ferruginous pygmy-owl is likely to become an endangered species in the foreseeable future primarily due to Factors A and E.

(29) Comment: One commenter stated that we should have used a shorter timeframe when analyzing future conditions of the pygmy-owl and suggested timeframes of 10 years and 20 years.

Our response: The Service has wide discretion when determining the appropriate timeframes when analyzing future scenarios and projecting future conditions of a species. As discussed in Future Scenarios above, we chose a 30-year timeframe to adequately capture natural variation and fluctuations in owl populations such as described in Flesch et al. 2017 (entire) and because it was the timeframe where we could make reasonably reliable predictions about the threats to the species.

(30) Comment: One commenter indicated that we overemphasized the effect of buffelgrass on pygmy-owls. The commenter stated that buffelgrass occurs primarily on slopes, which are not generally used by pygmy-owls.

Our response: Our analysis shows that the extent of the current distribution of buffelgrass and the rate at which that distribution is and can expand, as well as the detrimental effects to native vegetation communities, do indeed result in negative impacts to the viability of pygmy-owl populations. These impacts include loss of nest cavity substrates, reduction in woody vegetation cover, loss of habitat connectivity, and reduction in prey diversity and availability. While buffelgrass certainly seems to thrive on slopes, it also occurs on bajadas and on the valley floor in areas that support pygmy-owl habitat. The literature is clear that buffelgrass is an invasive threat to all vegetation communities that provide pygmy-owl habitat (Esque and Schwalbe 2002, p. 165; Lyons et al. 2013, p. 71; Wied et al. 2020, entire). See also Invasive Species above and the SSA report (Service 2022a, chapter 7). Thus, we did not overemphasize this effect.

(31) Comment: Two commenters stated that pygmy-owl populations in the Altar Valley in Arizona have remained relatively stable and that, since there are pygmy-owls in captivity, they are not at risk of extinction.

Our response: Listing determinations are made on the entire listable entity, rather than a single population within that listable entity. Though controlled propagation has a supportive role in the recovery of some listed species, the intent of the Act is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Controlled propagation is not a substitute for addressing factors responsible for an endangered or threatened species' decline and the presence of individuals of the species in captivity does not mean that a species is not in danger of extinction. Our first priority is to recover wild populations in their natural habitat wherever possible, without resorting to the use of controlled propagation. This position is fully consistent with the Act. As discussed in Determination of Cactus Ferruginous Pygmy-owl Status below, we have determined that the pygmy-owl is not in danger of extinction now but is likely to become so in the foreseeable future throughout its range.

(32) Comment: Two commenters felt that instead of a critical analysis of the best available data, the proposed rule relies on opinion and a subjective categorization of the future impacts of threats to the pygmy-owl. They stated that the SSA report lacks sufficient specific, relevant data that can be objectively analyzed.

Our response: As with most uncommon or rare species that the Service evaluates under our authorities, information, particularly quantitative data, is limited for the pygmy-owl. In our analysis of the status of the pygmy-owl, we used specific, quantifiable information wherever available. Where such information was not available, we relied on expert elicitation and review, as well as the best professional judgment of the biologists and scientists working on our review of the status of the pygmy-owl. Our assessment of the future impacts of threats to the pygmy-owl is based on reasonable and plausible scenarios of future climate change, habitat fragmentation and loss, conservation efforts, and the subspecies' responses to these influences. We do not agree with the commenters' statements that this finding relies on opinions or subjective categorization of future

impacts of the threats to pygmy-owls. Instead, we based this assessment on the best scientific and commercial data available, which includes habitat data and modeling (see Service 2022a, appendices 1, 4, and 6), climate data analysis (see Service 2022a, appendix 2), available scientific literature (see Literature Cited for Service 2022a and this final rule), and direct input from experts. We used the best available scientific and commercial data to develop plausible and representative factors and categories on which to evaluate the current condition of the subspecies, as well as future scenarios that represent a range of plausible futures. These are not speculative or subjective but based on the best available information alongside expert elicitation as described in the SSA report. Our methods for assessing the future resiliency, redundancy, and representation of the subspecies were selected given the nature of the best available information and are described in detail in chapters 6 and 8 of the SSA report (Service 2022a, chapters 6 and 8). Additionally, the pygmy-owl SSA report went through a peer and partner review process as described under Peer Review.

(33) Comment: Two commenters stated that the discussions of human population growth and development, and the potential for pygmy-owl habitat loss and fragmentation, were simplistic and failed to fully evaluate potential regional growth patterns and land use that influence habitat suitability for pygmy-owl.

Our response: Due to lack of specific and quantitative data on where human population growth and development would occur, we used regional growth and development projections, as these are the best available information on the subject at this time. There is much uncertainty about where future development projects will occur in the foreseeable future within the range of the pygmy-owl; therefore, it is difficult to project the specific areas of pygmy-owl habitat that will be affected. However, our analysis shows that the condition of all five analysis units will decline in the future, some to low condition, thus requiring that areas of suitable, intact pygmy-owl habitat outside of those currently occupied by pygmy-owls will be needed to maintain or improve the pygmy-owl's viability throughout its range. Therefore, understanding and considering the effects that future population growth and development will have includes not only areas currently occupied by pygmy-owls, but also unoccupied areas of pygmy-owl habitat that will be needed to sustain future viability of pygmy-owl populations. Our approach allowed us to evaluate all areas of suitable vegetation in a consistent manner across the range of the pygmy-owl and included consideration of areas of projected human population growth across the range of the pygmy-owl.

(34) Comment: One commenter felt the Service erroneously emphasized the need for undeveloped and unfragmented habitat and provided some information suggesting that pygmy-owls appear quite tolerant of human activity, even in some of the least productive habitats within its range.

Our response: As the commenter pointed out, the best available information does include some analysis of the level of development tolerated by pygmy-owls. However, the information provided by the commenter comes from one specific population group in the Arizona analysis unit, and this population group is currently extirpated with the last detection of pygmy-owl in this population group occurring in 2006. Surveys and monitoring in this area over the past 16 years have not detected any pygmy-owls. Substantial development and habitat fragmentation have occurred in this area over this time period, reducing the potential for pygmy-owls to disperse into this area and establish home ranges in the remaining habitat. As a result, we conclude that the poor condition of this population supports our determination that pygmy-owls have limited tolerance for development and fragmentation.

Conversely, the pygmy-owl population group southwest of this population group is characterized by large areas of undeveloped habitat and reduced levels of fragmentation and has maintained, and even increased, abundance of pygmy-owls. Additionally, pygmy-owl research in northern Sonora has also shown the detrimental impacts of development on habitat occupancy by pygmy-owls (Flesch 2021, entire). Pygmy-owls can exist in areas that have a relatively low level of habitat disturbance and development, but the presence of large blocks of nesting habitat and unfragmented dispersal corridors is necessary for the long-term viability of pygmy-owl populations and population groups. Thus, the best available information does not support the commenter's suggestion that pygmy-owls appear quite tolerant of human activity, even in some of the least productive habitats within its range.

(35) Comment: One commenter stated that the ordinal ranking scale we used for our analyses of suitable vegetation and habitat intactness did not allow for the nuances of habitat selection by individual pygmy-owls that has been observed in the field and that these analyses risk biasing the analyses towards undisturbed lands. The commenter stated that more rigorous analysis should have been conducted.

Our response: Field observations are extremely valuable in gaining insights about the life history and habitat use of a species. However, these data are sporadic and are largely unavailable across the range of the pygmy-owl. Therefore, although the information from such studies informed our models, fine-resolution data are not available at a scale that would inform a rangewide analysis of pygmy-owl habitat. As acknowledged in our SSA report (Service 2022a, section 6.1), our analyses required us to make several educated assumptions. As noted in the report, we lack specific habitat measurements related to the needs of the pygmy-owl (for example, canopy cover, tree density and height, species composition, structural diversity, patch size, and cavity availability required by the pygmy-owl) across its range. Therefore, we determined what available data sources and datasets were appropriate surrogates for pygmy-owl habitat requirements that we could apply consistently across the entire range of the pygmy-owl. Under this approach, we used the best available information in the form of remotely sensed measures of habitat metrics as surrogates for habitat characteristics needed by pygmy-owls and made reasonable assumptions based on this information. We acknowledged that these measures are not synonymous with pygmy-owl habitat, and we refer to the areas modeled with these tools as areas of appropriate vegetation. Although we recognize that pygmy-owls may use areas with higher levels of disturbance, such as low-density urban areas, these areas do not constitute high-quality pygmy-owl habitat and do not support the long-term viability of the subspecies; therefore, we did not consider these areas suitable for pygmy-owls (see also comment 34 above). Based on information from Arizona, Texas, and northern Sonora, areas supporting larger patches of undisturbed, native woody vegetation are needed for the long-term viability of pygmy-owls (Proudfoot 1996, pp. 75–76; Abbate et al. 1999, entire; Abbate et al. 2000, entire; Flesch et al. 2015, pp. 22–26; Flesch et al. 2017, entire; Cobbold et al. 2021, entire). We are required to use the best available information when making listing decisions. The Act and existing laws and regulations do not

require us to implement additional studies and research in order to fill in all the gaps in available data prior to making a 12-month finding. We cannot wait until all possible information is available as such a requirement would result in an undeterminable delay in meeting the statutory timelines and protections of the Act. Comment 34 above provides additional information related to the commenter's statement.

(36) Comment: Two commenters stated that we did not analyze data on growth and land cover change within the range of the pygmy-owl since our 12-month finding (76 FR 61856, October 5, 2011). The commenter stated that we should have analyzed this change using available remote sensing tools rather than rely on past and potential future threats.

Our response: Based on this comment, we examined the National Land Cover Dataset Enhanced Visualization and Analysis tool. Although this tool provides some measure of increases in developed areas and changes in forested areas, we found that the areas classified as forest did not adequately capture the areas used by pygmy-owls. Additionally, this tool is run at the county level, so it is difficult to see the changes to land cover in the areas specifically used by the pygmy-owl. In our SSA report, we used the LANDFIRE dataset to analyze habitat fragmentation within the range of the pygmy-owl, which gave us specific and detailed information about where development and fragmentation had occurred within the range of the pygmy-owl (Service 2022a, appendix 1; LANDFIRE 2016, unpaginated).

We rely heavily on the scientific community to provide the data needed in making listing decisions, and we welcome new information that may inform updated SSAs, future listing decisions, and 5-year status reviews. Therefore, in response to this comment, and to be certain we have used the best available data to analyze growth and changes in land cover, we completed some additional analysis on the effects of certain land uses in Texas and Arizona over the past decade (2010–2020) on pygmy-owl habitat. This additional analysis examined land cover changes within pygmy-owl habitat over the past decade and can be found in appendix 6 of the SSA report (Service 2022a, appendix 6) (see also our response to comment 10). Although this additional analysis does not change our general determinations on changes in growth and land-use cover since 2011 or the outcome of our listing decision, it provides additional support for our finding that areas approximately 100,000 acres of pygmy-owl habitat have been lost or modified and habitat fragmentation has continued, at least in Texas and Arizona, during this time period (Service 2022a, Appendix 6).

(37) Comment: One commenter stated that our intactness model described in the SSA report was overly conservative and inappropriate for our analysis and that our usage of the 200-acre aggregated pixel size in this analysis did not account for the variation in pygmy-owl home range sizes throughout their range. That commenter also stated that we did not explain the biological criteria we used in developing the habitat intactness model, but rather it was dependent on professional judgment, and the ordinal ranking scale we used in our analysis did not allow for the nuance of habitat selection by pygmy-owls.

Our response: As mentioned previously, our analysis did not include specific, quantitative data from each analysis unit within the range of the pygmy-owl as such data is not available. Rather, we examined the available data sources and datasets to determine an appropriate surrogate for the habitat needs of the pygmy-owl that could be applied consistently across the range of the pygmy-owl. We determined that remote sensed data related to land uses and vegetation characteristic is the best available information that can be consistently applied across the range of the pygmy-owl. These data were selected based on their ability to represent the biological needs of the pygmy-owl. We based our analysis of land cover types that may support pygmy-owls on habitat selection data for Arizona, Texas, and northern Sonora (Abbate et al. 1999, entire; Abbate et al. 2000, entire; Flesch 2003, entire; Flesch et al. 2015, entire; Proudfoot et al. 2020, entire). As part of our analysis, we overlaid pygmy-owl locations with land cover data to help inform our models in both the United States and Mexico. As mentioned previously, the Act and existing laws and regulations do not require us to implement additional studies and research in order to fill in all the gaps in available data prior to making a 12-month finding.

Our models were constructed using publicly available data sets. Detailed layers are more readily available in the United States and more limited in Mexico. We attempted to maintain consistency when building models across the range of the pygmy-owl. Our approach is necessarily broad because we lack specific data regarding many of the habitat attributes needed by pygmy-owls to maintain population viability. We acknowledge that these needs and the quality of habitat vary across the large geographical range of the pygmy-owl, but local and detailed studies and research related to these local variations are lacking. The use of surrogate factors that are available to us in existing data sets results in our best possible approach to address important factors across the large and diverse geographical range of the pygmy-owl.

As we state in our SSA report, data used in our models do not completely describe all of the characteristics of pygmy-owl habitat because insufficient information is available to include all pygmy-owl habitat needs in the models. These models do not describe all aspects of pygmy-owl habitat and thus, are not reported as pygmy-owl habitat areas, but rather as appropriate vegetation areas in the SSA. However, in the absence of rangewide, habitat-suitability information, assessing the trends or conditions in these remote sensing data is useful in understanding trends in vegetation conditions affecting the pygmy-owl. In other words, changes or conditions in this context are related to the conversion of these surrogate factors into conditions that are very likely related to actual habitat quality for pygmy-owls. As discussed in this final rule, the best available data indicate that habitat fragmentation and habitat loss are threats to the viability of the pygmy-owl. Therefore, it is reasonable to conclude that developed land cover has a lower habitat quality than intact habitat.

(38) Comment: One commenter stated that the Service relied heavily on future climate change, which has a high degree of uncertainty, and that in our 2011 12-month finding we found that the Sonoran Desert would be most vulnerable to climate change and that effects to the subspecies in the remainder of the range in Mexico would be less severe or that there would be no evidence of negative impact. The commenter further stated that there is no evidence that models have become more certain since our 2011 12-month finding.

Our response: There is always uncertainty when projecting future conditions. However, we used widely accepted climate models that covered a range of plausible future climate conditions in our analysis (Service 2022a, chapters 7 and 8, and appendix 2; IPCC 2014b, entire). These models have been updated and refined since our 2011 12-month finding and are thus more accurate than those used in that listing decision (IPCC 2014b, p. 56). We find that the Sonoran Desert Ecoregion is likely the most vulnerable portion of the pygmy-owl range to climate change

effects (see *Status Throughout a Significant Portion of Its Range*). However, as discussed in *Climate Change and Climate Conditions,* as well as in the SSA report, changes to climate are anticipated to result in impacts throughout the range of the pygmy-owl.

(39) Comment: One commenter stated that threats are concentrated in the Sonoran Desert and that pygmy-owl abundance is not being significantly affected by those threats in the majority of the western portion of the pygmy-owl's range to the extent that the subspecies rangewide is in danger of extinction or likely to become so in the foreseeable future.

Our response: Although we agree that the Sonoran Desert Ecoregion has a concentration of threats to the pygmy-owl (see *Status Throughout a Significant Portion of Its Range*), significant threats are acting throughout the range of the pygmy-owl. The threats acting on the subspecies are discussed in depth in the SSA report and summarized in this rulemaking, and we also included a table illustrating the threats within each analysis unit (Service 2022a, chapter 7 and appendix 5).

(40) Comment: Two commenters indicated that the Service did not adequately explain why we found the subspecies is threatened in our current listing decision when it was determined to be ''not warranted'' in our 2011 12-month finding, particularly given that much of the information was the same in both documents.

Our response: In order to clarify the changes to the information and status of the pygmy-owl, this final rule includes a new section specifically outlining the new information we considered subsequent to our 2011 12-month finding (see Summary of New Information Since the 2011 12-Month Finding).

(41) Comment: Several commenters requested additional clarification on what types of actions would or would not be excepted under the 4(d) rule related to development and habitat restoration and enhancement activities. In particular, they asked whether certain development activities, vegetation management, invasive species management, fuels management, or activities covered under a safe harbor agreement for another species would qualify for an exception under this part of the 4(d) rule, as well as specific questions related to the use of development guidelines, prescribed fire, and brush management. These commenters specifically asked that vegetation management along roadways and fuels management be included in the 4(d) rule. One commenter requested that development activities that followed certain guidelines be included in the 4(d) rule. Another commenter recommended that we consider the list of activities developed for use in the draft Programmatic Safe Harbor Agreement for the Masked Bobwhite Quail and review these activities in relation to the section 4(d) rule for pygmy-owl to provide assurance that these activities qualify as exemptions.

Our response: We have provided additional clarification to our discussion of habitat restoration and enhancement activities within the section entitled Provisions of the 4(d) Rule. In addition, we have included additional explanation for why the activities of development, roadway vegetation management, activities within a safe harbor agreement, fuels management, and some uses of prescribed fire are not included in the 4(d) rule. Any activities covered by the 4(d) rule should not negatively impact the pygmy-owl and should contribute to the conservation of the pygmy-owl. We acknowledge and understand the importance of managing vegetation strategically along roadways and in other areas for fire and invasive species management, and in development design and planning to promote the conservation of native species and their habitats. However, a broad exception under a 4(d) rule for such activities would prevent us from working with partners to conduct these activities in a way that minimizes effects to the pygmy-owl and its habitat. The design of projects such as these are dependent upon a number of site-specific factors requiring unique recommendations and approaches so that pygmy-owl-specific measures can be incorporated. Other regulatory approaches are available, such as under section 7 and section 10 of the Act, and the activities and practices outlined by commenters will be appropriately considered and included during the implementation of these approaches.

Determination of Cactus Ferruginous Pygmy-Owl 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 examined the following threats to the cactus ferruginous pygmy-owl: climate change and climate condition (Factor E), habitat loss and fragmentation (Factor A), human activities and disturbance (Factor B and Factor E), human-caused mortality (Factor B and Factor E), disease and predation (Factor C), and small population size (Factor E), and we determined that the primary threats to the subspecies are climate change and climate condition, and habitat loss and fragmentation. Existing regulatory mechanisms (Factor D) and conservation efforts do not address the threats to the cactus ferruginous pygmy-owl to the extent that listing the subspecies is not warranted.

Population resiliency is highly variable across the range of the pygmy-owl. Overall, three analysis units maintain a moderate level of resiliency, with western Mexico maintaining a high level of resiliency and Arizona with a low level of resiliency. Therefore, the majority of the analysis units we examined maintain some ability to withstand stochastic events. Additionally, the western Mexico and northeastern Mexico analysis units are estimated to have a magnitude of abundance of tens of thousands of pygmy-owls. Due to the broad geographic distribution and network of population groups that are connected within and between some analysis units throughout most of its range, the pygmy-owl has some ability to recolonize following catastrophic events and is considered to have adequate redundancy. The cactus ferruginous pygmy-owl currently has high genetic and ecological variability across the range. This ecological diversity provides the subspecies with sufficient representation and may allow the pygmy-owl to adapt to, and survive, future environmental change if this representation can be maintained.

After evaluating threats to the subspecies and assessing the cumulative effect of the threats under the Act's

section 4(a)(1) factors, we conclude that the risk factors acting on the cactus ferruginous pygmy-owl and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the subspecies is in danger of extinction now (an endangered species) throughout all of its range. Despite current stressors, the subspecies currently maintains adequate resiliency, redundancy, and representation across the range such that the subspecies is currently able to withstand stochastic and catastrophic events and maintain adequate genetic and ecological variation throughout its range. However, our analysis of the cactus ferruginous pygmy-owl's future conditions shows that the threats to the subspecies are likely to continue and, in some cases and areas, increase into the future, resulting in continued loss and fragmentation of habitat and a reduction in abundance, putting the subspecies at risk of extinction within the foreseeable future. We selected 30 years for the scope of our analysis in the foreseeable future because it captures multiple generations of pygmy-owls as well as stochastic variation in climate. Additionally, 30 years was the maximum time frame for which we could reasonably project certain land-use changes, urbanization, and climate patterns relative to the pygmy-owl and its habitat.

Under all future scenarios, we project a continued reduction in species viability throughout the range of the subspecies due to climate change (Factor E), habitat loss, and habitat fragmentation (Factor A). In 30 years, even under our most optimistic scenario, the reduced effects scenario, no analysis units will be in high condition, three will be in moderate condition, and two will be in low condition, a decrease from current conditions where one population is in low condition, three are in moderate condition, and one is in high condition. Over the next 30 years, many of the analysis units will become increasingly vulnerable to extirpation through the degradation of habitat conditions. We anticipate that urbanization and development (Factor A) will continue under all future scenarios and in all analysis units. Invasive species (Factor A) will continue to spread into pygmy-owl habitat in most analysis units and deforestation and wood harvesting will continue in all three analysis units in Mexico. Continued loss and degradation of pygmy-owl habitat (Factor A) will reduce overall species resiliency, impeding the ability of the subspecies to withstand stochastic events and increasing the risk of extirpation following such events. The loss of population groups will lead to a reduction in representation, reducing the subspecies' ability to adapt over time to changes in the environment, such as climate change.

The magnitude of current pygmy-owl abundance in three of the five analysis units is low to moderate, and while the remaining two analysis units have current pygmy-owl population estimates that are an order of magnitude higher (tens of thousands), these estimates do not represent actual pygmy-owl numbers and our analysis of future scenarios indicates that these estimates will all decline with an associated decline in the abundance and distribution of pygmy-owl population groups. This expected reduction in both the number and distribution of sufficiently resilient population groups will reduce redundancy and impede the ability of the subspecies to recolonize following catastrophic disturbance. Thus, after assessing the best available information, we conclude that the cactus ferruginous pygmy-owl is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

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

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for cactus ferruginous pygmy-owl, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered.

We evaluated the range of the cactus ferruginous pygmy-owl to determine if the species is in danger of extinction now 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. For the cactus ferruginous pygmy-owl, 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 in that portion.

The statutory difference between an endangered species and a threatened species is the time frame 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 imminence of threats that are driving the cactus ferruginous pygmy-owl to warrant listing as a threatened species throughout all of its range. We then considered whether these threats or their effects are occurring in any portion of the species' range such that the species is in danger of extinction now in that portion of its range. We examined the following threats: climate change and climate condition (Factor E) and habitat loss and fragmentation (Factor A), including cumulative effects.

We found a concentration of threats, *i.e.,* the impacts of climate change (Factor E), urbanization (Factor A), and invasive species (Factor A), in the Sonoran Desert Ecoregion, which extends from Arizona south into Sonora, Mexico. Climate change impacts to the pygmy-owl in the Sonoran Desert Ecoregion are likely to include loss of vegetation cover, reduced prey availability, increased predation,

reduced nest site availability, and vegetation community change. For example, models predict that the distribution of suitable habitat for saguaros, the primary pygmy-owl nesting substrate within the Sonoran Desert Ecoregion, will substantially decrease over the next 50 years under a moderate climate change scenario (Weiss and Overpeck 2005, p. 2074; Thomas et al. 2012, p. 43).

Climate models project that, by the end of the 21st century, the Sonoran Desert will experience an increase in drought conditions with a transition to a drier and more arid climate (Seager et al. 2007, p. 9; Cook et al. 2015, p. 6; Pascale et al. 2017, p. 806; Williams et al. 2020, p. 317). Given that this portion of the pygmy-owl's overall range is already characterized by arid and hot conditions and is in the midst of an extended drought (NDMC 2022, unpaginated), the effects from climate change represent a higher concentration of effects than in other portions of the pygmy-owl's range, which generally are characterized by higher precipitation and lower temperatures resulting in a baseline of higher greenness and vegetation health. In general, annual precipitation in the Sonoran Desert is positively correlated to pygmy-owl productivity (Flesch et al. 2015, p. 26). Timing and quantity of precipitation affects lizard and rodent abundance in ways that suggest rainfall is an important driver of prey population and community dynamics. In general, cool-season rainfall is positively correlated with rodent populations and warm-season rainfall is positively correlated with lizard populations. Projected increases in variability and decreases in quantity of precipitation will likely lead to a decrease in prey abundance for the pygmy-owl (Jones 1981, p. 111; Flesch 2008, p. 5; Flesch et al. 2015, p. 26).

Urban expansion and human population growth trends are expected to continue in the Sonoran Desert Ecoregion. Between 2010 and 2022, Arizona experienced some of the highest population increases in the U.S. (U.S. Census Bureau 2021b, unpaginated). Border counties in Arizona are projected to increase by 60 percent to 2.5 million by 2050 (OEO 2018, unpaginated). The Maricopa-Pima-Pinal County areas of Arizona are expected to see the population grow by as much as 132 percent between 2005 and 2050, creating rural-urban edge effects across thousands of acres of pygmy-owl habitat (AECOM 2011, p. 13).

Development in Mexico is focused along the border and this area of northern Mexico has faster population growth than other Mexican states (Pineiro 2001, pp. 1–2). In Sonora, the population is projected to reach 3.5 million by 2030 (CONAPO 2014, p. 25). This development focuses potential barriers or impediments to pygmy-owl movements in a region that is important for demographic support (immigration events and gene flow) of pygmy-owl population groups, including movements such as dispersal. If urban expansion and development continues as expected, it will encompass a substantial portion of the current distribution of the pygmy-owl in the Sonoran Desert Ecoregion.

The invasion of nonnative vegetation, particularly nonnative grasses, has altered the natural fire regime over the Sonoran Desert Ecoregion portion of the pygmy-owl's range. Buffelgrass is prevalent and increasing throughout much of this portion of the pygmy-owl's range, leading to increased fire frequency in a system that is not adapted to fire (Schmid and Rogers 1988, p. 442; D'Antonio and Vitousek 1992, p. 73; Burquez and Quintana 1994, p. 23; Halverson and Guertin 2003, p. 13; Van Devender and Dimmit 2006, p. 5; Wied et al. 2020, pp. 47–48). While a single fire in an area may or may not produce long-term reductions in plant cover or biomass, repeated wildfires in a given area are capable of ecosystem type-conversion from native desertscrub to nonnative annual grassland. These repeated fires may render the area unsuitable for pygmy-owls and other native wildlife due to the loss of trees and columnar cacti, and reduced diversity of cover and prey species (Brooks and Esque 2002, p. 336; Lyons et al. 2013, entire).

Despite the current concentration of threats and their increasing effects to pygmy-owls and pygmy-owl habitat, the Sonoran Desert Ecoregion currently supports an abundance of pygmy-owls in the high hundreds and a moderate amount of intact, suitable vegetation. Consequently, these factors are currently maintaining an overall moderate level of resiliency in this portion of the range. Additionally, there is currently habitat connectivity with evidence of pygmy-owl movement among population groups, providing redundancy throughout the Sonoran Desert Ecoregion. Representation is also currently being maintained through pygmy-owl occupancy of a variety of vegetation types throughout the Sonoran Desert Ecoregion with gene flow among these population groups. However, under all three future scenarios, this portion of the range is expected to become less resilient due to continued habitat fragmentation and the effects of climate change on habitat conditions, resulting in a reduction of pygmy-owl abundance and occupancy. These deteriorating conditions are also anticipated to result in declines in redundancy and representation through the loss of population groups within the ecoregion.

Although some threats to the cactus ferruginous pygmy-owl are concentrated in the Sonoran Desert Ecoregion, the best scientific and commercial data available do not indicate that the concentration of threats, or the subspecies' responses to the concentration of threats, results in the subspecies currently being in danger of extinction in that portion of its range. Given that pygmy-owls in the Sonoran Desert Ecoregion are maintaining populations in the high hundreds and the region currently supports moderate levels of intact, suitable vegetation, the subspecies is not currently in danger of extinction there. Therefore, the threats concentrated in the Sonoran Desert Ecoregion are such that pygmy-owls in this portion of the range are not currently in danger of extinction (endangered) but are likely to become endangered in the foreseeable future (threatened), and hence have the same status as the pygmy-owl 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 apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Because the Arizona analysis unit is the only analysis unit currently in a low resiliency condition, we concluded that the subspecies' current biological status in this portion of the range may differ from the subspecies' biological status rangewide, and therefore evaluated whether this portion may be significant. Arizona is not ecologically significant because it contains the same habitat type as northern Sonora. Arizona is also not significant in size or importance to the species as a whole because it constitutes a very small portion of the species' range, comprising only 12 percent of the range, and containing a small proportion of the total number of pygmy-owls. Therefore, we do not find that the Arizona analysis unit does not constitute a significant portion of the range of the pygmy-owl.

Distinct Vertebrate Population Segment

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate

Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population segment in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened?).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of these conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722, February 7, 1996), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

Analysis of Potential Distinct Population Segments

The petitioners requested that we consider two potential DPSs of the pygmy-owl for protection under the Act, a Sonoran Desert DPS and an Arizona DPS. We considered potential DPS configurations that were not included in the petition in our 2011 12-month finding. Our conclusions regarding those additional DPS configurations have not changed since our 2011 12-month finding based on the best available information; therefore, they are not discussed further here.

Potential Eastern Population DPS

In our 2011 finding (76 FR 61856), we found that the eastern population of the pygmy-owl was physically, genetically, and ecologically discrete from the remainder of the range. The eastern portion of the range represents approximately 32 percent of the range; thus, the physical loss of this geographic area would represent a significant gap in the range of the taxon. Therefore, the eastern population is discrete and significant under our DPS policy. However, the best available information indicates this DPS has the same status as the remainder of the range. The eastern population maintains a high abundance in northwestern Mexico. The pygmy-owl is not in danger of extinction now in the eastern population but is likely to become so in the foreseeable future, thus the eastern population has the same status as the subspecies throughout its range.

Potential Western Populations DPS

In our 2011 finding (76 FR 61856), we also found that the western population of the pygmy-owl was physically, genetically, and ecologically discrete from the remainder of the range. The western portion of the range represents approximately 68 percent of the range; thus, the physical loss of this geographic area would represent a significant gap in the range of the taxon. Therefore, the western population is discrete and significant under our DPS policy. However, the best available information indicates this DPS has the same status as the remainder of the range. The western population of the pygmy-owl maintains the highest abundance of pygmy-owls throughout the range. The pygmy-owl is not in danger of extinction now in the western population but is likely to become so in the foreseeable future, thus this population has the same status as the subspecies throughout its range. The DPS policy, published on February 7, 1996 (61 FR 4722), is intended for cases where only a segment of a vertebrate species' range needs the protections of the Act, rather than the entire range of a species, or when segments of a vertebrate species range differ in status between endangered and threatened. Although the eastern and western pygmy-owl DPSs are disjunct and somewhat geographically isolated from one another, they include the entire distribution of the pygmy-owl and the status of the species is the same for both DPSs and the subspecies overall. In accordance with the DPS policy, our authority to list DPSs is to be exercised sparingly. Thus, listing of the entire subspecies is appropriate in this case.

Potential Sonoran Desert DPS

None of the boundaries of the petitioner's Sonoran Desert DPS include an international border or boundary (CBD and DOW 2007, pp. 4–6). Therefore, the petitioned DPS must meet the first condition for discreteness in order to be considered a valid DPS, because it does not meet the second condition. As discussed in detail in our 2011 12-month finding (76 FR 61856, October 5, 2011), there are no obvious physical, geographic, ecological, or genetic barriers that separate the petitioned Sonoran Desert DPS from the rest of the pygmy-owl's range to the south. Additional genetic information we have received since our 2011 12-month finding has continued to show genetic connectivity between the petitioned Sonoran Desert DPS and the rest of the pygmy-owl's population to the south and that genetic

differentiation amongst pygmy-owls sampled results from isolation by distance, rather than geographic isolation (Cobbold et al. 2022b, entire).

The Sonoran Desert Ecoregion may differ ecologically from the remainder of the areas within its range. However, the best available scientific and commercial data do not indicate that this ecological difference has resulted in any morphological, physiological, or genetic differentiation within pygmy-owl populations in the Sonoran Desert that would indicate a marked separation from other populations of pygmy-owls (Proudfoot et al. 2006a, entire; 2006b, entire; Cobbold et al. 2022b, entire).

Environmental characteristics within the Sonoran Desert have likely resulted in the reduced abundance and densities of pygmy-owls found in this area (Abbate et al. 1999, entire; Abbate et al. 2000, entire; Flesch 2003, pp. 36–92), and these reductions continue (Flesch et al. 2017, entire; Cobbold et al. 2021, entire). However, this situation does not appear to have resulted in any physical differentiation, at least as anecdotally observed, from adjacent pygmy-owl populations. We find that there is no evidence that the Sonoran Desert population of pygmy-owl is markedly separated in any way from the remainder of the taxon. Therefore, we determine, based on a review of the best available information, that the petitioned Sonoran Desert DPS of the pygmy-owl does not meet the discreteness conditions of the 1996 DPS policy. As such, this population segment does not qualify as a DPS under our policy and is not a listable entity under the Act. The DPS policy indicates that significance should be analyzed only if a population segment has been identified as discrete. Because we found that the Sonoran Desert population segment did not meet the discreteness element and, therefore, does not qualify as a DPS under the Service's DPS policy, we did not conduct an evaluation of significance. Additionally, as discussed in *Status Throughout a Significant Portion of Its Range,* above, this portion of the range is not in danger of extinction now, but likely to become so in the foreseeable future and therefore has the same status as the rest of the range.

Potential Arizona DPS

Because we are evaluating this petitioned entity based on the currently accepted taxonomic classification of the pygmy-owl, the taxon considered in this finding is the same as for our 1997 listing of the pygmy-owl (62 FR 10730, March 10, 1997). Consequently, the petitioned Arizona DPS is exactly the same DPS configuration that was the subject of litigation and, ultimately, the same DPS configuration that the Service removed from the Federal List of Endangered and Threatened Wildlife in 2006 (71 FR 19452, April 14, 2006). That final rule presents our analysis showing that, while the discreteness criteria for the DPS were met, we concluded that this DPS was significant to the taxon as a whole. Our analysis in the final rule to delist the pygmy-owl showed that the then-listed Arizona DPS of the pygmy-owl was not markedly different in its genetic characteristics from pygmy-owls in northern Sonora, Mexico, and did not occur in a unique ecological setting; nor would loss of the DPS result in a significant gap in the range of the taxon. None of the scientific information compiled since the delisting alters the conclusions made in that final rule. Therefore, we determine, based on a review of the best available information, that the petitioned Arizona DPS of the pygmy-owl does not meet the significance conditions of the 1996 DPS policy. Therefore, this population segment does not qualify as a DPS under our policy and is not a listable entity under the Act.

Determination of Status

Our review of the best scientific and commercial data available indicates that the cactus ferruginous pygmy-owl meets the definition of a threatened species. Therefore, we are listing the cactus ferruginous pygmy-owl as a threatened species throughout its range 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 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.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting'') and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan for the cactus ferruginous pygmy-owl will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our Arizona Ecological Services 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.

Once a species is listed, funding for recovery actions become 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 States of Arizona and Texas will be eligible for Federal funds to implement management actions that promote the protection or recovery of the cactus ferruginous pygmy-owl. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(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 (action agency) must enter into consultation with us.

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 Federal lands administered by the Department of the Interior's U.S. Fish and Wildlife Service, Bureau of Land Management, and National Park Service (Organ Pipe Cactus National Monument and Ironwood Forest National Monument); the Department of Defense's Barry M. Goldwater Air Force Range and the U.S. Army Corps of Engineers (for issuance of section 404 Clean Water permits); the U.S. Department of Agriculture's U.S. Forest Service, Natural Resources Conservation Service, and Farm Service Agency; and construction and maintenance of roads or highways by the Federal Highway Administration.

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 like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting 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 rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a final rule that is designed to address the cactus ferruginous pygmy-owl's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this final rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the cactus ferruginous pygmy-owl. The provisions of this 4(d) rule will promote conservation of the cactus ferruginous pygmy-owl by encouraging survey and monitoring to increase our understanding of the abundance and distribution of pygmy-owls, by facilitating habitat restoration and enhancement projects that will benefit the cactus ferruginous pygmy-owl, and by increasing public awareness and support for the conservation of the pygmy-owl. The provisions of this rule are one of many tools that we will use to promote the conservation of the cactus ferruginous pygmy-owl.

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 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 (such as permits associated with habitat conservation plans or safe harbor agreements) 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

As discussed previously in Summary of Biological Status and Threats, we have concluded that the cactus ferruginous pygmy-owl is likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and fragmentation (Factor A) and climate change and climate conditions (Factor E).

The protective regulations for the pygmy-owl incorporate all prohibitions from section 9(a)(1) of the Act, codified at 50 CFR 17.21, that apply to endangered species. Putting these prohibitions in place will help to prevent further declines in cactus ferruginous pygmy-owl populations, preserve the subspecies' remaining populations and habitat, and reduce the negative effects from other ongoing or future threats. This 4(d) rule will provide for the conservation of the cactus ferruginous pygmy-owl by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Exceptions to the prohibition on take include all of the general exceptions to the prohibition against take of endangered wildlife as set forth in 50 CFR 17.21 and certain other specific activities that we propose for exception, as described below. Therefore, we prohibit take of the cactus ferruginous pygmy-owl, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

The 4(d) rule provides for the conservation of the subspecies by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the cactus ferruginous pygmy-owl, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the subspecies' conservation. In our proposed rule to list the pygmy-owl as threatened and its associated 4(d) rule, we considered a number of activities that could potentially be appropriate for our consideration in the 4(d) rule, including the need for compatibly managed grazing activities that result in the vegetation structure and composition needed to support the cactus ferruginous pygmy-owl.

Livestock grazing is not inherently detrimental to the cactus ferruginous pygmy-owl, provided that grazing management results in a plant community with species and structural diversity suitable for the species. Therefore, during the public comment period, we encouraged public comments on the issue of properly managed grazing and the best approach to address livestock grazing and management with the tools available. Based on the comments we received, and our analysis in the proposed listing rule, we determined that proper grazing management best occurs on the local level, and thus broad determinations within this rule would not be beneficial to the subspecies or local land managers. We considered promoting conservation of the cactus ferruginous pygmy-owl in the 4(d) rule by encouraging management of vegetation communities in ways that support both long-term viability of livestock enterprises and concurrent conservation of pygmy-owls. However, we determined that other mechanisms under our authorities, such as section 7 consultations for grazing permits with a Federal nexus, would be more appropriate to support conservation benefits than provisions in this 4(d) rule. Therefore, livestock grazing is not excepted under this rule.

As discussed above under Summary of Biological Status and Threats, ongoing climate change, particularly increases in drought conditions, and habitat loss and fragmentation are affecting the status of the cactus ferruginous pygmy-owl. Education and outreach related to cactus ferruginous pygmy-owl recovery, specific survey and monitoring activities, and habitat restoration and habitat enhancement projects have the potential to benefit the cactus ferruginous pygmy-owl and mitigate some of these threats. Accordingly, this 4(d) rule addresses activities to facilitate conservation and management of the cactus ferruginous pygmy-owl where the activities currently occur and may occur in the future by excepting the activities from the Act's take prohibition under certain specific conditions. The exceptions to take prohibitions included in this 4(d) rule are education and outreach, specific survey and monitoring activities, and habitat restoration and enhancement (described below) that are expected to have negligible impacts to the cactus ferruginous pygmy-owl and its habitat and will benefit the conservation of the pygmy-owl. These activities are intended to improve our understanding of the abundance and distribution of pygmy-owls, increase management flexibility, and encourage support for conservation of, and habitat restoration or enhancement for, the cactus ferruginous pygmy-owl.

Education and Outreach

Education and outreach are a vital part of cactus ferruginous pygmy-owl recovery and progress towards achieving and maintaining population viability of cactus ferruginous pygmy-owls. This 4(d) rule excepts from take prohibitions those cactus ferruginous pygmy-owl education and outreach activities that use live pygmy-owls, or parts, and are undertaken for the purposes of increasing public awareness of cactus ferruginous pygmy-owl biology, ecology, or recovery needs, as well as of the positive effects of having pygmy-owls as a viable part of the local ecosystems on the local society, economy, and quality of life for communities. Such educational

activities may include use of educational captive-reared cactus ferruginous pygmy-owls, pygmy-owl skins, parts of pygmy-owls, as well as zoological exhibition. For such activities, raptors are typically covered by a permit issued under 50 CFR part 21, which governs species protected under the MBTA. To remove redundant permitting, this 4(d) rule will cover incidental take resulting from educational and outreach activities, including zoological exhibition, provided the researcher already holds an appropriate and valid MBTA permit issued under 50 CFR part 21. These activities can increase public awareness, engagement, and support for cactus ferruginous pygmy-owl conservation and recovery.

Education and outreach activities must be coordinated with the Service prior to commencing those activities. Coordination should occur no later than 60 calendar days prior to the initiation of the proposed activity, and this coordination can occur by contacting the Service's Arizona Ecological Services office. Coordination can occur in person, by phone, or through written communications. Written documentation of coordination with the Service should be maintained by the project proponent for education and outreach activities. Education and outreach activities covered by this 4(d) rule would have to be consistent with an existing designated recovery program, such as a recovery outline, final recovery plan, or recovery implementation schedule, and benefit cactus ferruginous pygmy-owl conservation through increased public awareness and engagement, which supports cactus ferruginous pygmy-owl recovery. Education and outreach qualifying under this exception (activities undertaken by those already possessing an MBTA permit as described above) would not require a permit issued under section 10(a) of the Act.

Specific Survey and Monitoring Activities

In our proposed rule, we asked the public and State agencies to provide comments on using the State permitting process, if required, in this 4(d) rule as the basis for an exception to the prohibitions on take for certain pygmy-owl surveying and monitoring activities. We consider surveying and monitoring activities necessary to understand and implement cactus ferruginous pygmy-owl conservation and recovery. We lack data on the current abundance, density, and distribution of the cactus ferruginous pygmy-owl across its geographic range in both the United States and Mexico. We also lack comprehensive data on the productivity, survival, mortality, and other natural history characteristics of the cactus ferruginous pygmy-owl. Such data have been gathered historically, but only in localized areas and primarily only in the United States and northern Sonora. Where we have data on occurrence, abundance, density, and natural history variables, it allows us to better understand the status of the cactus ferruginous pygmy-owl and what actions are necessary to conserve population groups and enhance status and viability. However, surveying and monitoring activities can result in short-term negative effects to cactus ferruginous pygmy-owls and, potentially, the take of individuals and nest sites. Take in the form of harm, such as disturbance, could potentially occur as a result of surveying and monitoring, but would be very unlikely if conducted following the approved protocol. We do not anticipate the direct fatality of any pygmy-owls as a result of these excepted activities. We conclude that any potential indirect take resulting from these activities will be inconsequential to the conservation and recovery of the pygmy-owl.

We want to encourage more comprehensive and widespread surveying and monitoring activities across the geographic range of the cactus ferruginous pygmy-owl because of the benefit to pygmy-owl conservation. Such benefits include the ability to direct conservation activities to those areas where they can be most effective, assessing the success of conservation activities, avoiding impacts to occupied areas, and identifying and understanding the effects of threats to pygmy-owls and their habitat. We have determined that the benefits gained by implementing surveying and monitoring activities that do not require handling of pygmy-owls and use only call playback and visual observation methods, and that are being used to implement scientific studies or regulatory compliance to gain needed data for appropriated conservation and recovery of the pygmy-owl, outweigh the potential, short-term impacts to pygmy-owls.

In response to comments received by the State wildlife agencies of Arizona and Texas, we held follow up discussions with both State agencies. From these discussions, we determined that the existing permitting program in Arizona is conducive to supporting our inclusion of an exception to the take prohibitions under a 4(d) rule for certain surveying and monitoring activities covered by the AGFD permitting process. The TPWD issues permits only for activities that require handling of the animal. Thus, their permitting process is not conducive to an exception to the take prohibitions related to surveying and monitoring as we described them in the proposed listing rule and associated 4(d) rule (call playback and visual monitoring). Consequently, the exceptions for certain surveying and monitoring activities under this 4(d) rule apply only to activities in the State of Arizona.

This exception recognizes AGFD's authority to issue a permit to conduct call broadcast surveys and monitoring and nest monitoring for listed species. This State permitting would ensure oversight for surveyor and monitor qualifications, as well as data submission to the State agency. The AGFD permitting process will ensure that the impacts of the excepted activities are avoided or minimized. The Service will access this data through the AGFD's Heritage Data Management System for use within Service programs. Thus, an exception to the prohibitions of take is granted under this 4(d) rule if the surveyors and monitors possessed a valid AGFD scientific activity license that authorizes the appropriate survey and monitoring activities. The excepted survey and monitoring activities include broadcast call surveys using conspecific calls following the approved Service pygmy-owl survey protocol (available in early 2023), visual monitoring that does not occur at a nest site, and visual monitoring at nest sites if included on the AGFD scientific activity license. This exception would not cover any activities that involve the handling of pygmy-owls. The surveying and monitoring activities excepted under this 4(d) rule must be associated with a legitimate scientific project or regulatory compliance activity. Call playback methods for recreational use are not excepted under this 4(d) rule and are subject to section 9 take prohibitions under the Act. In Arizona, a Federal section 10(a)(1)(A) permit is not required for the excepted surveying and monitoring activities described above. In Texas, these activities would require a Federal section 10(a)(1)(A) permit.

Because research that involves the capture, handling, marking, humane care, tissue sample collection, etc., of pygmy-owls may result in the direct take of cactus ferruginous pygmy-owls, we have determined that Federal oversight of these activities being conducted on this federally protected species are best administered through our section 10 permitting process (under the Act's section 10(a)(1)(A)). This

permitting process allows us to assess the appropriateness of the proposed research projects and activities with regard to promoting the conservation of a listed species; evaluate the proposed research activities in relation to the requirements of the Act; reduce the potential for redundancy of effort and overlapping effects to cactus ferruginous pygmy-owls; and facilitate the opportunity to receive, analyze, and incorporate the most current information into conservation and recovery actions.

Habitat Restoration and Enhancement

Incidental take resulting from habitat restoration or enhancement projects within the geographic range of the pygmy-owl that improve the viability of cactus ferruginous pygmy-owl populations and population groups, and have been coordinated and approved by the Service, is excepted from the take prohibitions under this section 4(d) rule. Habitat restoration and enhancement projects are needed to increase nest site (cavity) availability; improve habitat connectivity among cactus ferruginous pygmy-owl population groups; increase prey availability; improve vegetation structure and health and overall ecosystem health and sustainability within the range of the pygmy-owl; and decrease nonnative species, watershed degradation and erosion, and habitat loss or reduction due to extreme weather events and wildfire.

In order to be excepted from take prohibitions, the results of such actions must not rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. Although activities such as roadside vegetation management and removing trees for fuels management may indirectly benefit pygmy-owls or pygmy-owl habitat through the reduction of fires, these activities are highly dependent upon site- and project-specific conditions and have the potential to cause significant negative effects on pygmy-owls and their habitats. A broad exception under a section 4(d) rule for such activities cannot account for these project-specific conditions that would need to be considered to minimize any potential negative effects on the pygmy-owl. Similarly, though activities already covered under existing safe harbor agreements for other listed species may provide conservation benefits to the pygmy-owl, a broad exception to such actions would prevent consideration of any effects on the pygmy-owl and its habitat. Therefore, the take exceptions under this 4(d) rule do not apply to roadway vegetation management, fuels management, safe harbor agreement activities for other species, or other activities as described below that involve removal of trees, large shrubs, and other woody vegetation.

This 4(d) rule excepts from take prohibitions those habitat restoration or enhancement activities that have improving cactus ferruginous pygmy-owl habitat conditions as their primary purpose or that directly improve or benefit pygmy-owl habitat conditions (even if the purpose of the activity is not to restore or enhance pygmy-owl habitat) across the subspecies' geographical range. Specific habitat restoration or enhancement actions that improve pygmy-owl habitat conditions include the following: nest box installation; establishment or protection of nesting substrates (large trees or columnar cacti) to increase the availability of nest cavities; restoration or enhancement of native vegetation structure and species; control or eradication of invasive, nonnative species; riparian enhancement or restoration; water developments; watershed improvements; improved habitat connectivity; and fire management.

Prescribed fire within Sonoran Desert vegetation communities is not excepted under this 4(d) rule. Fire can be an effective tool in maintaining ecosystem health, which is beneficial to the cactus ferruginous pygmy-owl. However, Sonoran Desert vegetation communities are not fire-adapted, and the use of fire in these vegetation communities must be carefully implemented or important pygmy-owl habitat elements can be lost or altered. Therefore, because of the risks associated with the loss or alteration of pygmy-owl habitat, the use of fire in Sonoran Desert vegetation communities is not excepted from the take prohibitions under this 4(d) rule. We acknowledge that some areas cannot discretely be identified as Sonoran Desert vegetation, such as transition areas from grassland valleys to bajadas that support Sonoran Desert vegetation. In these transition areas, prescribed fire can be an important tool to maintain ecosystem health and viability. Therefore, during the coordination and approval process with the Service (described below), these transition areas can be discussed, and a determination made as to the appropriateness and benefit of prescribed burning in these areas and whether it is appropriate to except the project under this 4(d) rule. Criteria that will be considered include the objective of the prescribed burn, presence of saguaros (either mature or young age classes), presence of tree species that are not fire adapted, the size and vegetation composition of drainages within the prescribed burn area, season of burn, and anticipated severity of the burn.

Woody vegetation communities provide the most important pygmy-owl habitat factors, particularly woodland tree canopy cover. Projects and actions that remove woody vegetation or woodland tree cover would typically reduce the quality of habitat for pygmy-owls. Such actions may reduce vegetation structure and cover diversity, pygmy-owl prey diversity, and important predator avoidance and thermoregulatory cover for the pygmy-owl. Therefore, any action that would result in more than a minimal reduction or removal of tree cover (as determined during the coordination with the Service described below), including along roadways or for fuels management, is not excepted from take under the 4(d) rule. The extent of woody vegetation or tree removal that occurs during the implementation of projects that can be excepted under this 4(d) rule will generally be determined during project-specific coordination. However, as an example of the level of removal that the Service may consider as minimal, we have historically used a level of between 20 percent and 30 percent reduction in tree cover as maintaining habitat values for the pygmy-owl. Typically, in order to be excepted under this 4(d) rule, projects or activities will not have woody vegetation removal as the primary objective of the action.

We acknowledge that woody vegetation invasion within certain vegetation communities, such as native grassland communities, can be detrimental to the health and viability of those communities. A healthy, functioning ecosystem that can support listed species is one of the primary objectives of the Act. In these cases, management of woody vegetation can improve the health and function of these vegetation communities and would benefit pygmy-owl conservation. If the objective of a vegetation management activity (including brush management or mesquite control) is to improve ecosystem health, function, and sustainability, we can coordinate with project proponents to determine if the specifics of the vegetation management project will allow the project to be excepted from take under this 4(d) rule (see information below on coordination and approval for activities included in this 4(d) rule). Criteria that will be considered when reviewing habitat restoration projects may include the objective of the vegetation

management activity, presence of saguaros (either mature or young age classes), proximity to and the type of drainages within the proposed activity area and the inclusion of protection measures to avoid and protect trees and other riparian vegetation along drainages, and the methods of vegetation control to be used.

Actions that promote the use of, or encourage the growth of, nonnative vegetation species are not excepted in the 4(d) rule. Nonnative vegetation species can outcompete and replace native species that provide important habitat factors for the pygmy-owl. This outcome is particularly true when nonnative species form monocultures, resulting in low diversity and dense ground cover that alters natural fire regimes and reduces pygmy-owl prey diversity and availability. Conversely, activities related to the management and control of nonnative, invasive species have a direct benefit to pygmy-owls through the reduction of competition, promotion of native species and biodiversity, enhancement of prey species, and the maintenance of natural fire regimes. Therefore, activities related to the management, control, or removal of nonnative, invasive species may fall under the habitat restoration and enhancement exception of this 4(d) rule, if coordination with the Service occurs as described for habitat restoration and enhancement activities in this 4(d) rule and those activities are implemented in a way that avoids tree removal, avoids impacts to nest substrates (columnar cacti and large trees), uses low-impact treatment methods, and considers seasonal disturbance issues (minimizes impacts during nesting and dispersal seasons).

During the public comment period, we received a request to include development activities in the 4(d) rule. Although we acknowledge the potential benefits of providing specific guidance for landowners relating to development activities, the unique settings and circumstances in which these projects occur limit our ability to develop broad guidance applicable to all projects across the range of the pygmy-owl. Furthermore, development, and subsequent habitat loss and fragmentation, are major threats to the pygmy-owl and its habitat. Therefore, development activities are not excepted under this 4(d) rule.

In order to fall under the activities included under the habitat restoration or enhancement take exception in the 4(d) rule, persons implementing cactus ferruginous pygmy-owl habitat enhancement and restoration activities must coordinate with the Service prior to commencing work and receive approval. If there is doubt about whether or not a project or activity would be excepted under this 4(d) rule, please contact the Service's Arizona Ecological Services Field Office. Coordination should occur no later than 60 calendar days before the desired start date of the proposed activity and can occur by contacting that office. Coordination can occur in person, by phone, or through written communications. Written documentation of coordination with the Service should be maintained by the project proponent for the habitat restoration or enhancement activities. Prior to approving proposed activities, the Service will coordinate with the appropriate affected entities (land management agencies, Tribal entities, private landowners, etc.) and identify any concerns, but also opportunities for partnerships where proximate land managers can work together to effectively treat greater areas of pygmy-owl habitat.

For all forms of allowable take in the 4(d) rule, reasonable care will be practiced to minimize the impacts from those actions. Reasonable care means limiting the impacts to cactus ferruginous pygmy-owl individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times (*e.g.,* conducting activities that might impact nesting cactus ferruginous pygmy-owls or nesting habitat only after nesting is concluded for the year) and locations, as feasible; procuring and implementing technical assistance from a qualified biologist on projects regarding all methods prior to the implementation of those methods; minimizing the number of individuals disturbed in the existing wild population; implementing best management practices to ensure no disease or parasites are introduced or spread in pygmy-owl populations, including the proper use of quarantine and health evaluations; and preserving the genetic diversity of wild populations.

Permitting and Other Regulations To Cover Take

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 wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 must 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 the cactus ferruginous pygmy-owl that may result in otherwise prohibited take 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 cactus ferruginous pygmy-owl. 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 and implementing regulations (50 CFR 424.12) require that we designate critical habitat at the time a species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. In the December 22, 2021 (86 FR 72547) proposed listing rule, we determined that designation of critical habitat was

prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We are still in the process of assessing this information. We plan to publish a proposed rule to designate critical habitat for the cactus ferruginous pygmy-owl in the near future.

Required Determinations

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 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 contacted the Ak Chin Indian Community, Apache Tribe of Oklahoma, Cocopah Indian Tribe, Comanche Nation, Gila River Indian Community, Hopi Tribe, Pascua Yaqui Tribe, San Carlos Apache Tribe, Salt River Pima-Maricopa Indian Community, Tohono O'odham Nation, Tonkawa Tribe of Indians, White Mountain Apache Tribe, Wichita and Affiliated Tribes, and Yavapai Apache Nation regarding the SSA process by mail and invited them to provide information and comments to inform the SSA. Our interactions with these Tribes are part of our government-to-government consultation with Tribes regarding the pygmy-owl and the Act. The Tohono O'odham Nation was invited to participate as a member of the SSA team because they have historically participated on issues related to the cactus ferruginous pygmy-owl and they have extensive acreage of pygmy-owl habitat. They accepted the invitation and have participated in development of the SSA, as well as with pygmy-owl surveys and monitoring. We will continue to work with Tribal entities during the rulemaking process.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* in Docket No. FWS–R2–ES–2021–0098 and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding an entry for "Pygmy-owl, cactus ferruginous" to the List of Endangered and Threatened Wildlife in alphabetical order under Birds to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * *	*	*	*	* * *
		BIRDS		
* * *	*	*	*	* * *
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	Wherever found	T	88 FR [**Federal Register** page where the document begins], 7/20/2023; 50 CFR 17.41(l).[4d]
* * *	*	*	*	* * *

■ 3. Amend § 17.41 by adding paragraph (l) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(l) Cactus ferruginous pygmy-owl *(Glaucidium brasilianum cactorum).* (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the cactus ferruginous pygmy-owl. Except as provided under paragraphs (l)(2) and (3) of this section and §§ 17.4, 17.5, and 17.7, 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 subspecies:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions.* In regard to this subspecies, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife, and (c)(6) and (7) for endangered migratory birds.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife and (d)(3) and (4) for endangered migratory birds.

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take cactus ferruginous pygmy-owl while carrying out the following legally conducted activities in accordance with this paragraph (l)(3):

(i) Educational and outreach activities that have been coordinated with the Service no later than 60 calendar days prior to the initiation of the proposed activity, provided the researcher already holds an appropriate, valid permit issued under part 21 of this chapter, which governs species protected under the Migratory Bird Treaty Act, for educational activities involving the use of live pygmy-owls, zoological exhibitions, pygmy-owl skins, or parts of pygmy-owls or other raptors.

(ii) Specific surveying and monitoring activities within the State of Arizona that do not include handling of pygmy-owls (*e.g.,* call playback, visual observation, collection of feathers in nests or on the ground, and camera monitoring) and only if they are conducted under a valid scientific activity license issued by the Arizona Game and Fish Department.

(A) Data collected must be submitted to the Arizona Game and Fish Department for inclusion in their Heritage Data Management System.

(B) Call playback surveys and monitoring must follow the most current, Service-approved protocol.

(C) Surveying and monitoring activities must be associated with a legitimate scientific project or regulatory compliance activity.

(iii) Habitat restoration and enhancement activities and projects that are coordinated with and approved by the Service no later than 60 calendar days prior to the initiation of the proposed activity.

(A) These activities and projects may include activities that enhance cactus ferruginous pygmy-owl habitat conditions; improve ecosystem health and sustainability within the range of the pygmy-owl; improve habitat connectivity; increase availability of nest cavities; increase prey availability; reduce or control invasive, nonnative plant species; and enhance native plant communities, particularly woodland riparian communities.

(B) These activities and projects do not include prescribed fire within Sonoran Desert vegetation communities (unless these activities and projects occur in vegetation community transition areas and are coordinated with and approved by the Service), actions that would result in more than a minimal reduction or removal of tree cover (as determined through coordination with and approved by the Service and generally involving no more than a 30 percent reduction in tree cover) such as fuels management or roadway vegetation management, land development, or actions that use or promote nonnative vegetation species.

(iv) For all forms of allowable take, reasonable care must be practiced to minimize the impacts from the actions. Reasonable care means:

(A) Limiting the impacts to cactus ferruginous pygmy-owl individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question;

(B) Using methods and techniques that result in the least harm, injury, or death, as feasible;

(C) Undertaking activities when and where they have the least impact (*e.g.,* conducting activities that might impact nesting cactus ferruginous pygmy-owls or nesting habitat only after nesting is concluded for the year), as feasible;

(D) Procuring and implementing technical assistance from a qualified biologist on all methods and techniques used for a project prior to their implementation;

(E) Minimizing the number of individual pygmy-owls disturbed in the existing wild population;

(F) Implementing best management practices to ensure no diseases or parasites are introduced into existing cactus ferruginous pygmy-owl populations; and

(G) Preserving the genetic diversity of wild populations.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–14486 Filed 7–19–23; 8:45 am]

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