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**Title 3—****Proclamation 10353 of March 28, 2022****The President****Commemoration of the 50th Anniversary of the Vietnam War****By the President of the United States of America****A Proclamation**

On National Vietnam War Veterans Day, we honor all those who bravely served in the Vietnam War and who sacrificed, as did their families and caregivers, on behalf of our Nation.

For almost two decades, Americans raised their right hands and committed to serve and defend our Constitution as uniformed members of the United States Armed Forces during a tumultuous period in our country's history. Throughout the years of the Vietnam War, 9 million Americans earned the title of United States veteran. Today and every day, we honor their bravery and commitment and give thanks to a generation of Americans who valiantly fought in service of the country they love while recognizing the continuing impact on so many veterans of the Vietnam conflict, along with their families, caregivers, and survivors. We will always remember those we lost and honor those who came home.

In 2012, our Nation launched a 13-year long commemoration of the 50th anniversary of the Vietnam War to ensure that every veteran, family, caregiver, and survivor impacted by the difficult years in Vietnam feels our Nation's gratitude for their sacrifice. Every service member of the Vietnam generation should know that their sacrifices mattered and that their service made a difference. The names etched in The Wall at the Vietnam Veterans Memorial remind us of our loved ones who gave their all and never came home. To the families, caregivers, and survivors of the more than 58,000 service members whose names are memorialized in the black granite, we pledge to never forget the eternal sacrifice of your loved ones and what you have sacrificed for the Nation.

To the families of the over 1,500 service members who remain missing and unaccounted for, know that our Nation's efforts to bring them home will never stop.

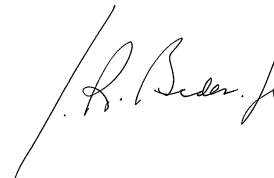
We pledge our steadfast care and support to our Vietnam veterans, as we do for all of our veterans. We will honor our sacred obligation to you and your family.

And to each of the 6 million Vietnam War era veterans who are with us today, we honor your service and all that you have done for our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby affirm this Nation's commitment to commemorate the 50th Anniversary of the Vietnam War, which began on Memorial Day, May 28, 2012, and which will continue through Veterans Day, November 11, 2025. I call upon all Americans to seek out and extend the Nation's profound gratitude to each of our Vietnam veterans and their families and caretakers during public ceremonies and programs throughout the country, while expressing deep compassion for the families of the fallen, those who remain missing and unaccounted for, and all others who served yet no longer walk among us.



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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

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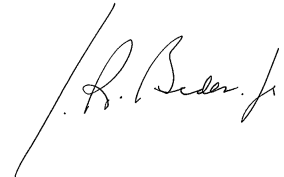
## Presidential Documents

Order of March 28, 2022

### **Sequestration Order for Fiscal Year 2023 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended**

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act (the “Act”), as amended, 2 U.S.C. 901a, I hereby order that, on October 1, 2022, direct spending budgetary resources for fiscal year 2023 in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 28, 2022.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget’s report of March 28, 2022, prepared pursuant to section 251A(9) of the Act.



THE WHITE HOUSE,  
*March 28, 2022.*

# Rules and Regulations

Federal Register

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

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## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

#### 7 CFR Part 3434

RIN 0524-AA39

#### Hispanic-Serving Agricultural Colleges and Universities (HSACU) Certification Process

**AGENCY:** National Institute of Food and Agriculture (NIFA), Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This amendment to NIFA regulations updates the list of institutions that are granted Hispanic-Serving Agricultural Colleges and Universities (HSACU) certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2021, and ending September 30, 2022.

**DATES:** This rule is effective March 31, 2022 and applicable October 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Amanda Sahinovic; Financial Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; 805 Pennsylvania Ave.; Kansas City, MO 64105; Voice: 816-266-9905; Email: [HSACU@usda.gov](mailto:HSACU@usda.gov).

#### SUPPLEMENTARY INFORMATION:

*HSACU Institutions for Fiscal Year 2019:* This rule makes changes to the existing list of institutions in appendix B of 7 CFR part 3434. The list of institutions is amended to reflect the institutions that are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2021, and ending September 30, 2022.

*Certification Process:* As stated in 7 CFR 3434.4, an institution must meet the following criteria to receive HSACU certification: (1) Be a Hispanic-Serving Institution (HSI), (2) offer agriculture-related degrees, (3) not be designated an

1862 land-grant institution, (4) not appear on the Excluded Parties List System (EPLS), (5) be accredited, and (6) award at least 15% of agriculture-related degrees to Hispanic students over the two most recent academic years.

NIFA obtained the latest report from the U.S. Department of Education's National Center for Education Statistics that lists all HSIs and the degrees conferred by these institutions (completion data) during the 2019–20 academic year. NIFA used this report to identify HSIs that conferred a degree in an instructional program that appears in appendix A of 7 CFR part 3434 and to confirm that over the 2018–19 and 2019–20 academic years at least 15% of the degrees in agriculture-related fields were awarded to Hispanic students. NIFA further confirmed that these institutions were nationally accredited.

The updated list of HSACUs is based on (1) completions data from 2018–19 and 2019–20, and (2) enrollment data from Fall 2020. NIFA identified 158 institutions that met the eligibility criteria to receive HSACU certification for FY 2022 (October 1, 2021 to September 30, 2022).

Section 7102 of the Agriculture Act of 2018 (Pub. L. 115–334) amended Section 1404(14) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(14)) to remove the opt-in, opt-out language for Hispanic Serving Agricultural Colleges and Universities (HSACU) in order to apply for Non Land-Grant College of Agriculture (NLGCA) designation.

*Appeal Process:* As set forth in 7 CFR 3434.8, NIFA will permit HSIs that are not granted HSACU certification to submit an appeal within 30 days of the publication of this notice.

*Classification:* This rule relates to public property, loans, grants, benefits, or contracts. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, or the Congressional Review Act, 5 U.S.C. 801

*et seq.*, and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 3434

Administrative practice and procedure, Agricultural research, education, extension, Federal assistance, Hispanic-serving institutions.

Accordingly, 7 CFR part 3434 is amended as set forth below:

#### PART 3434—HISPANIC-SERVING AGRICULTURAL COLLEGES AND UNIVERSITIES CERTIFICATION PROCESS

■ 1. The authority citation for part 3434 continues to read as follows:

**Authority:** 7 U.S.C. 3103.

■ 2. Revise appendix B to read as follows:

#### Appendix B to Part 3434—List of HSACU Institutions, 2021–2022

The institutions listed in this appendix are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2021 and ending September 30, 2022. Institutions are listed alphabetically under the state of the school's location, with the campus indicated where applicable.

##### Arkansas (1)

Cossatot Community College of the University of Arkansas

##### Arizona (14)

Arizona State University—Downtown Phoenix  
Arizona Western College  
Central Arizona College  
Chandler-Gilbert Community College  
Cochise County Community College District  
Estrella Mountain Community College  
GateWay Community College  
Mesa Community College  
Northern Arizona University  
Paradise Valley Community College  
Phoenix College  
Pima Community College  
Rio Salado College  
South Mountain Community College

##### California (87)

Allan Hancock College  
American River College  
Antelope Valley College  
Bakersfield College  
Berkeley City College  
Butte College

Cabrillo College  
 California Baptist University  
 California Lutheran University  
 California State Polytechnic University—  
 Pomona  
 California State University—Bakersfield  
 California State University—Channel Islands  
 California State University—Chico  
 California State University—Dominguez Hills  
 California State University—Fresno  
 California State University—Fullerton  
 California State University—Long Beach  
 California State University—Los Angeles  
 California State University—Monterey Bay  
 California State University—Northridge  
 California State University—Sacramento  
 California State University—San Bernardino  
 California State University—San Marcos  
 California State University—Stanislaus  
 Chabot College  
 Chaffey College  
 Charles R Drew University of Medicine and  
 Science  
 Citrus College  
 City College of San Francisco  
 College of Marin  
 College of San Mateo  
 College of the Canyons  
 College of the Desert  
 College of the Sequoias  
 Cosumnes River College  
 Crafton Hills College  
 Cuesta College  
 Cuyamaca College  
 Feather River Community College District  
 Fresno City College  
 Fresno Pacific University  
 Fullerton College  
 Hartnell College  
 Humboldt State University  
 Las Positas College  
 Long Beach City College  
 Los Angeles Pierce College  
 Merced College  
 Merritt College  
 Mills College  
 MiraCosta College  
 Mission College  
 Modesto Junior College  
 Monterey Peninsula College  
 Napa Valley College  
 National University  
 Orange Coast College  
 Oxnard College  
 Pacific Union College  
 Palo Verde College  
 Palomar College  
 Pasadena City College  
 Reedley College  
 Rio Hondo College  
 Saddleback College  
 Saint Mary's College of California  
 San Bernardino Valley College  
 San Diego City College  
 San Diego Mesa College  
 San Diego State University  
 San Joaquin Delta College  
 San Jose City College  
 San Jose State University  
 Santa Monica College  
 Santa Rosa Junior College  
 Solano Community College  
 Southwestern College  
 University of La Verne  
 University of Redlands  
 Ventura College

Victor Valley College  
 West Hills College-Coalinga  
 West Los Angeles College  
 West Valley College  
 Whittier College  
 Woodland Community College  
 Yuba College

**Connecticut (1)**

Naugatuck Valley Community College

**Colorado (9)**

Aims Community College  
 Colorado Mountain College  
 Colorado State University Pueblo  
 Community College of Denver  
 Lamar Community College  
 Metropolitan State University of Denver  
 Morgan Community College  
 Otero Junior College  
 Trinidad State Junior College

**Florida (10)**

Broward College  
 Florida International University  
 Hillsborough Community College  
 Indian River State College  
 Nova Southeastern University  
 Palm Beach State College  
 South Florida State College  
 The College of the Florida Keys  
 University of Central Florida  
 Valencia College

**Illinois (11)**

City Colleges of Chicago—Richard J Daley  
 College  
 College of DuPage  
 College of Lake County  
 Concordia University—Chicago  
 Dominican University  
 Joliet Junior College  
 North Park University  
 Northeastern Illinois University  
 Roosevelt University  
 Rush University  
 Triton College

**Kansas (3)**

Dodge City Community College  
 Garden City Community College  
 Seward County Community College

**Massachusetts (3)**

Bunker Hill Community College  
 Holyoke Community College  
 North Shore Community College

**Maryland (1)**

Montgomery College

**Nevada (4)**

College of Southern Nevada  
 Nevada State College  
 Truckee Meadows Community College  
 University of Nevada—Las Vegas

**New Jersey (10)**

Bergen Community College  
 College of Saint Elizabeth  
 Cumberland County College  
 Essex County College  
 Fairleigh Dickinson University—  
 Metropolitan Campus  
 Hudson County Community College  
 Kean University  
 Montclair State University

Rutgers University—Newark  
 Saint Peter's University

**New Mexico (12)**

Central New Mexico Community College  
 Eastern New Mexico University Ruidoso  
 Branch Community College  
 Eastern New Mexico University—Main  
 Campus  
 Eastern New Mexico University—Roswell  
 Campus  
 Mesalands Community College  
 New Mexico Junior College  
 Northern New Mexico College  
 Santa Fe Community College  
 University of New Mexico—Los Alamos  
 Campus  
 University of New Mexico—Main Campus  
 University of the Southwest  
 Western New Mexico University

**New York (14)**

College of Staten Island CUNY  
 CUNY Bronx Community College  
 CUNY City College  
 CUNY Hostos Community College  
 CUNY Hunter College  
 CUNY LaGuardia Community College  
 CUNY New York City College of Technology  
 CUNY Queens College  
 CUNY Queensborough Community College  
 CUNY Stella and Charles Guttman  
 Community College  
 Nassau Community College  
 Suffolk County Community College  
 Sullivan County Community College  
 SUNY Westchester Community College

**North Carolina (1)**

Sampson Community College

**Ohio (1)**

Union Institute & University

**Oklahoma (1)**

Oklahoma Panhandle State University

**Oregon (1)**

Chemeketa Community College

**Pennsylvania (1)**

Lehigh Carbon Community College

**Puerto Rico (11)**

Inter American University of Puerto Rico—  
 Ponce  
 Inter American University of Puerto Rico—  
 San German  
 Pontifical Catholic University of Puerto  
 Rico—Arecibo  
 Pontifical Catholic University of Puerto  
 Rico—Ponce  
 Universidad Ana G. Mendez—Carolina  
 Campus  
 Universidad Ana G. Mendez—Cupey Campus  
 Universidad Ana G. Mendez—Gurabo  
 Campus  
 Universidad Ana G. Mendez—Online  
 Campus  
 University of Puerto Rico—Humacao  
 University of Puerto Rico—Rio Piedras  
 University of Puerto Rico—Utua

**Texas (37)**

Central Texas College  
 Frank Phillips College  
 Houston Community College

Lone Star College System  
 McLennan Community College  
 Northeast Texas Community College  
 Odessa College  
 Palo Alto College  
 Richland College  
 Saint Edward's University  
 San Antonio College  
 South Plains College  
 Southwest Texas Junior College  
 St. Mary's University  
 Sul Ross State University  
 Tarrant County College District  
 Texas A & M University—Corpus Christi  
 Texas A & M University—Kingsville  
 Texas State Technical College  
 Texas State University  
 Texas Tech University  
 Texas Woman's University  
 The University of Texas at Arlington  
 The University of Texas at Austin  
 The University of Texas at El Paso  
 The University of Texas at San Antonio  
 The University of Texas Health Science Center at Houston  
 The University of Texas Rio Grande Valley  
 University of Houston  
 University of Houston—Clear Lake  
 University of North Texas  
 University of St Thomas  
 University of the Incarnate Word  
 Vernon College  
 Wayland Baptist University  
 West Texas A & M University  
 Western Texas College

#### Washington (4)

Big Bend Community College  
 Heritage University  
 Wenatchee Valley College  
 Yakima Valley College

#### Wisconsin (1)

Mount Mary University

Done at Washington, DC, this day of March 24, 2022.

**Carrie L. Castille,**

*Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AG89

#### Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American

Industry Classification System (NAICS) Sectors related to Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; and Construction. Specifically, SBA is increasing size standards for 68 industries in those sectors, including 58 industries and two subindustries (“exceptions”) in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry (“exception”) in Sector 23 (Construction).

**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205-6618, or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions.

Section 1831 of the National Defense Authorization Act for Fiscal Year 2017 (“NDAA 2017”), Public Law 114-328 (December 23, 2016) directed SBA to

establish size standards for all agricultural enterprises in the same manner as for other industries and to include them in the five-year rolling review procedures established under section 1344(a) of the Jobs Act. Accordingly, in this final rule, SBA has evaluated the size standards for all agricultural industries, including 46 industries that are being reviewed for the first time. As stated above, historically, the size standards for most agricultural industries were established by statute.

In addition to the comprehensive review of size standards, SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886 (September 27, 2017)).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of second five-year review of size standards under the Jobs Act, SBA reviewed all receipt-based size standards in NAICS Sectors 11, 21, 22, and 23 to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published a proposed rule in the October 2, 2020 issue of the **Federal Register** (85 FR 62239) which proposed to increase the size standards for 68 industries in the above sectors, including 58 industries and two

<sup>1</sup> On December 21, 2021, the U.S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . .” In the near future, SBA will issue a proposed rule to adopt the OMB NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

subindustries (“exceptions”) in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry (“exception”) in Sector 23 (Construction). In this final rule, SBA is adopting the proposed size standards from the October 2020 proposed rule without change, except for a further increase to the size standard for the Forest Fire Suppression and Fuel Management Services exceptions to NAICS 115310 based on public comments and the latest available data. For these exceptions, SBA is adopting a higher size standard of \$30 million instead of the proposed \$25 million.

In conjunction with the current comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the

proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s Size Standard Methodology is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each receipt-based industry in NAICS Sectors 11 (except industries under Subsectors 111 and 112), 21, 22, and 23, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 Economic Census special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size

groupings. To evaluate industries under Subsectors 111 and 112, SBA used the special tabulation of the 2012 Census of Agriculture obtained from the USDA’s National Agricultural Statistics Service (NASS). To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association’s (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS-NG) for fiscal years 2016–2018. Table 4 of the October 2020 proposed rule, Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 100 industries and three subindustries (exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors from Table 4 of the proposed rule supported increasing size standards for 65 industries and three subindustries, and decreasing size standards for 35 industries. Table 1, Summary of Calculated Size Standards, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards unchanged
11 .....	Agriculture, Forestry, Fishing and Hunting .....	64	60	4	0
21 .....	Mining, Quarrying, and Oil and Gas Extraction .....	4	3	1	0
22 .....	Utilities .....	3	3	0	0
23 .....	Construction .....	32	2	30	0
All Sectors ....	.....	103	68	35	0

In the October 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all

size standards for which the analytical results supported an increase to size standards. To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA’s loan programs, SBA analyzed FPDS-NG data for fiscal years 2018–2020 and internal data on its guaranteed loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In the proposed rule, SBA sought comments on its proposal to increase size standards for 68 industries and subindustries and retain the current size standards for the remaining 35 industries in NAICS Sectors 11, 21, 22 and 23. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule, whether the decision not to lower any size standards is justified by the COVID–19 pandemic, whether the equal

weighting of individual factors to derive an industry size standard is appropriate, and whether the data sources used were appropriate or sufficient.

#### Discussion of Comments

SBA received a total of 1,021 comments to the proposed rule from a wide range of entities, including individuals, businesses, organizations, and trade associations. Of the 1,021 comments received, 1,013 comments pertained to Sector 11—including 942 comments that pertained to the animal production industries and 71 comments that pertained to the Agricultural (Sector 11) industry generally. SBA also received three comments on NAICS 115310 (Support Activities for Forestry) and its two exceptions, and one comment each on NAICS codes 237990 (the dredging exception), 236220 and NAICS Sector 23. SBA received one comment that was not relevant to the proposed rule and 1 comment that voiced a general objection to the proposed rule without providing any rationale. The comments to the proposed rule are available at [www.regulations.gov](http://www.regulations.gov) (RIN 3245-AG89) and are summarized and discussed below.

#### *Comments on Proposed Changes to Sector 11—Agriculture, Forestry, Fishing and Hunting*

SBA received a total of 1,013 comments to its proposed changes to size standards for industries in Sector 11. Of the 1,013 comments received, 942 comments, many of which were nearly identical, objected to the proposed rule on the grounds that it would result in Federal funding for corporate animal agribusiness, including concentrated animal feeding operations (CAFOs). These commenters stated that the increase of certain agricultural size standards would result in large corporate agricultural concerns with potentially abusive animal practices qualifying as small for SBA's financial assistance programs. Most of these commenters did not identify a particular NAICS code or set of NAICS codes, but the SBA assumes they most likely referred to NAICS codes 112111 through 112519, which correspond to the animal production industries. The remaining 71 comments objected to the proposed changes to the size standards on the grounds that it would unfairly benefit larger businesses and farms. These comments emphasized the historical consolidation in the agricultural sector as well as larger farms receiving the majority of Federal assistance and subsidies. One commenter also cited the difficulty for smaller farms to enter the

market and the prevalence of vertical integration for concentrated animal feeding operations (CAFOs) as reasons not to raise agricultural size standards.

#### SBA Response

SBA disagrees with commenters that the proposed regulations will allow a significant number of large firms to qualify as small in the animal production industries, namely NAICS codes 112111, 112112, 112120, 112310, 112320, 112330, 112340, 112390, 112410, 112420, 112511, 112512 and 112519. Based on data from the 2012 Agricultural Census, SBA determined that if the proposed size standards were adopted, the number of small firms in these industries would increase from 801,603 to 821,632, an increase of 20,029 firms or 2.5%. The percentage of small firms in these industries would increase from 96.5% under current size standards to 98.9% under the proposed size standards. SBA also analyzed its internal data on 7(a) and 504 loans to determine the impact of increases to size standards on SBA's financial assistance programs for these industries.

As discussed in the proposed rule, the majority of the animal production industries previously had a \$750,000 receipts-based size standard, which was established directly by Congress in section 806 of the Small Business Reauthorization Act of 2000, Appendix I, Public Law 106-554, 114 Stat. 2763, (December 21, 2000). In 2016, Congress passed NDAA 2017, directing SBA to establish size standards for these industries in the same manner that the agency establishes the size standards for other industries and to include them in the five-year rolling review under the Jobs Act. Effective August 19, 2019, SBA raised the \$750,000 receipts-based size standard for these industries to \$1 million in an interim final rule, adjusting all monetary size standards for inflation (84 FR 34261 (July 18, 2019)).

Based on the data for fiscal years 2019-2020, the time period when the higher \$1 million size standard was effective, SBA did not see any increase to the total number of firms receiving loans in the animal production industries identified above. Recognizing that firms may have qualified for SBA's financial assistance programs under the tangible net worth and net income based alternative size standard, and thus, may have exceeded the industry size standard, SBA also analyzed the distribution of loans by revenue and determined that there was not an increase in the number of loans to firms with revenues between \$0.75 million and \$1 million during fiscal years 2019-2020. SBA found that the average firm

size of businesses receiving loans was much smaller than the current \$1 million industry size standard, indicating that larger small firms are not the primary beneficiaries of SBA's financial assistance programs.

Generally, the majority of loans guaranteed by SBA through its 7(a) and CDC/504 loan programs are disbursed to firms that are much smaller than the industry size standard, in part due to the SBA's "credit elsewhere" test (13 CFR 120.101). This test requires lenders to certify that an applicant to the SBA's loan program is unable to obtain a loan on reasonable terms without a Federal Government guaranty, and that some or all of the loan is not available from the resources of the applicant business or the personal resources of the principals of the applicant business. SBA's proposed changes to size standards do not impact this requirement; thus, smaller small firms are more likely to remain the primary beneficiaries of SBA's financial assistance programs as firms at the margin of SBA's industry size standards are more likely to be able to obtain credit elsewhere.

For the above reasons, SBA does not anticipate that a 2.5% increase to the total number of small firms in the animal production industries will unfairly favor larger small firms in those industries, particularly those that may be classified as CAFOs, to the detriment of smaller small firms in accessing SBA's financial assistance. Therefore, SBA is adopting the size standards for the animal production industries identified above, as proposed.

#### *Comments on Proposed Changes to NAICS 115310—Support Activities for Forestry and Its Forest Fire Suppression and Fuel Management Services Exceptions*

SBA received three comments generally supporting the proposed increase to the size standard for NAICS 115310 and its two exceptions. SBA proposed to increase the size standard for the overall NAICS 115310 (Support Activities for Forestry) from \$8 million to \$10 million and the size standard for the Forest Fire Suppression and Fuel Management Services exceptions to that NAICS code from \$20.5 million to \$25 million. These comments listed a number of factors in support of the proposed increases, including increased costs, increased size of Federal contracts, increased length, frequency and severity of wildfires, and Government's encouragement to use wood biproducts to generate further receipts. The commenters stressed that if the size standard is not raised, they would be forced to cut back on growth

to stay small and possibly lay off employees. Two of these commenters petitioned SBA to raise the size standard for the two exceptions to between \$35 million and \$41.5 million, with one commenter requesting that SBA immediately increase the size standard to at least \$22 million until a final determination can be made.

#### SBA Response

SBA agrees with commenters that a higher size standard better reflects the economic characteristics of the firms within NAICS 115310 and its two exceptions. In the proposed rule, SBA's calculated size standard for the Forest Fire Suppression and Fuel Management Services exceptions was \$23.5 million. However, in view of the inherent uncertainty of occurrences of forest fires and recent surges in forest fire incidents and extended fire seasons, SBA believes that contracting officers need to have better flexibility to be able to hire enough small businesses, especially in the worst-case scenario. In the proposed rule, SBA estimated that in a very busy fire season, it is not implausible to assume the length of fire season to be 120 days with 14 hours work shifts of fire crews. Based on a review of the latest available data, SBA determined that the length of the average fire season has increased in recent years as well as the severity of fires in terms of total acreage burned. For example, based on data from the National Interagency Fire Center (<https://www.nifc.gov/fire-information/statistics/wildfires>), SBA determined that two of the three fire seasons with total acres burned above ten million have occurred in the past five years, and all of them within the past seven years. Based on recent data, SBA estimates that a very busy fire season could last as long as seven months. Assuming an average price of \$43 dollars per person per hour, a total amount of about \$9 million could be awarded to a firm with an average number of four crews (one crew comprises 20 firefighters) during a longer, more severe fire season. In the case of the largest firms with 15–20 crews, the amount could reach up to \$43 million. Both figures include only payments to firefighters for direct fire suppression activities and do not cover additional payments, such as payments for fire engines, water tenders, etc. With the reality of a longer and more severe average fire season in mind, in the proposed rule, SBA proposed to increase the size standard for the Forest Fire Suppression and Fuels Management Services exceptions to \$25 million, above the current size standard of \$20.5 million and the calculated size

standard of \$23.5 million. However, in light of public comments and more recent data demonstrating the increasing severity and length of wildfires and the growing costs to suppress them, in this final rule, SBA is adopting a higher size standard of \$30 million. In addition to the comprehensive review of size standards, SBA also adjusts its monetary-based size standards for inflation at least once every five years but may choose to adjust them more frequently if economic conditions warrant an increase during the five-year period.

SBA reviewed the arguments and data provided by commenters requesting that SBA establish an even higher size standard for the Forest Fire Suppression and Fuel Management Services exceptions in the range of \$35 million to \$41.5 million. SBA believes that the arguments and data provided by commenters were not sufficient to support a size standard higher than \$30 million because the economic characteristics of firms in this industry do not support a size standard near the SBA's maximum receipts-based size standard. Specifically, while two commenters maintained that increased operational costs, longer fire seasons and the almost exclusive use of set-asides by the Federal government in the industry exceptions have caused many firms to cut back on growth to stay small, SBA determined that only a very few firms providing services under the industry exceptions may face a scenario where they would need to downsize or reject work in order to remain small. The average firm size of firms participating in the Forest Fire Suppression and Fuel Management Services is \$3.7 million, far below SBA's proposed size standard of \$25 million and much lower than the adopted size standard of \$30 million. Generally, SBA would expect to see a larger average firm size for the industry if a large number of firms were approaching the size standard and having to downsize or reject work in order to remain small.

Based on SBA's analysis of the five primary factors for the Forest Fire Suppression and Fuel Management Services exceptions, provided in Table 4 of the October 2020 proposed rule, a size standard in the range of \$35 million to \$41.5 million recommended by the commenters would be supported by only one factor. Only the Gini coefficient factor supported a \$41 million size standard for these exceptions. All other factors supported \$23.5 million or less. SBA's decision to adopt a higher \$30 million size standard was influenced by information submitted by three commenters, our

communications with Forest Service officials, and review of updated information on firms involved in forest fire suppression. All these indicated that forest fire seasons have become longer and more severe and fire suppression (including wages to fire crews) and equipment costs have increased from the time when the \$25 million size standard was proposed. Thus, SBA believes that a size standard of \$30 million is appropriate for this industry and will benefit small businesses of all sizes as well as the Federal Government in terms of access to an expanded pool of small businesses to draw from for small business set-asides in case of unexpected surges in forest fires. The inherent uncertainty of occurrences of forest fires and recent surges in forest fire incidents and extended fire seasons and the contracting officers' need to have flexibility to be able to hire enough small businesses, especially in the worst case scenario, also supports a higher \$30 million size standard. SBA believes that competition within the industry will improve as more set-aside opportunities are created, and businesses have a longer runway to gain experience and compete with larger firms whose primary services are outside of NAICS 115310. Given the above reasons, SBA is adopting \$10 million as the size standard for NAICS 115310 and \$30 million as the size standard for Forest Fire Suppression and Fuel Management Services exceptions under that NAICS industry.

#### *Comments on Proposed Changes to the Dredging and Surface Cleanup Activities Exception to NAICS 237990—Other Heavy and Civil Engineering Construction*

SBA received one comment expressing support for SBA's approach to calculating the size standard for the Dredging and Surface Cleanup Activities (Dredging) exception under NAICS 237990 (Other Heavy and Civil Engineering Construction). Specifically, the commenter supported the SBA's proposal to increase the size standard for Dredging from \$30 million to \$32.5 million in average annual receipts. This comment also supported keeping the 40% equipment requirement for this exception as outlined in Footnote 2 under the SBA's Table of Size Standards, or perhaps even raising it to higher than 40%. The commenter expressed that any alternative to the equipment requirement found in footnote 2, such as basing the requirement on contract dollar value or the number of personnel involved, would not be as effective at preventing



large firms from accessing small business set-aside opportunities.

**SBA Response**

SBA agrees with the commenter that SBA’s proposed size standard better reflects the economic characteristics of the firms within the Dredging industry. SBA believes that the proposed size standard will benefit all small firms as a larger size standard extends the time that small firms can remain small and compete for larger Dredging contracts. As a result of this expanded runway, small firms will be able to acquire more experience and technical capabilities in order to compete with larger firms once they exceed the size standard. Moreover, with an expanded pool of small businesses, the Federal Government will have more qualified small businesses to choose from, and as a result, likely will set aside more contracts for all small businesses. SBA agrees with the commenter that the 40% equipment requirement for this exception as outlined in footnote 2 of the SBA’s Table of Size Standards is appropriate. Given the expressed support for SBA’s proposed increase to the size standard for the Dredging exception to NAICS 237990 and the absence of any significant adverse comments opposing the increase, SBA is

adopting \$32.5 million as the size standard for Dredging, as proposed.

*Comments on Proposed Changes to NAICS 236220—Commercial and Institutional Building Construction*

SBA received one comment regarding SBA’s proposal to maintain the size standard for NAICS 236220 (Commercial and Institutional Building Construction) at \$39.5 million. The analytical results supported a lower \$25.5 million size standard for NAICS 236220, but considering the impact of the COVID–19 pandemic and Government response, SBA proposed to retain the current \$39.5 million size standard. The commenter argued that the size standard for NAICS 236220 should be increased to help small firms overcome the government’s overly restrictive contracting practices in this industry which results in disadvantages to truly small firms. The commenter cited such practices as excessive and high threshold past performance requirements as well as a general rise in overall project size requirements. The commenter also emphasized that the COVID–19 pandemic has resulted in a contraction of the pool of small businesses able to contract with the government. The commenter believes that the result of these circumstances is

that only mentor-protégé firms will be able to qualify under these very restrictive contracting opportunities.

**SBA Response**

In response to comments that the Federal government’s contracting practices in NAICS 236220 disadvantage small firms and that the COVID–19 pandemic has resulted in a contraction of the pool of small businesses able to contract with the Government SBA analyzed data from FPDS–NG during fiscal years 2018–2020 to evaluate the number and size of Federal contracting opportunities available to small firms. Based on an analysis of this data, SBA determined that there was an increase in dollars obligated to small businesses during fiscal years 2018–2020, which suggests that small firms have continued to do well in the Federal marketplace while providing valuable services to the Federal government during the COVID–19 related economic crisis. Table 2, Dollars Obligated to Small Businesses under NAICS 236220, shows the count of small business contracts under this NAICS code, the dollars obligated to small businesses, and the annual growth rate in small business dollars obligated during fiscal years 2018–2020.

**TABLE 2—DOLLARS OBLIGATED TO SMALL BUSINESSES UNDER NAICS 236220**

Fiscal year	Count of small businesses contracts	Dollars obligated to small businesses (\$ million)	Annual growth rate in dollars obligated to small businesses
2018 .....	38,498	\$9,444.9	
2019 .....	38,702	9,883.4	4.6%
2020 .....	40,888	10,088.9	2.1%

In the proposed rule, SBA used FPDS–NG data from fiscal years 2016–2018 to evaluate small business participation in the Federal contracting market in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of an industry’s total receipts. In general, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of the total industry’s receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases where the small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with

respect to the Federal contracting factor. Regarding NAICS 236220 specifically, SBA calculated a Federal contracting factor of 9.4%, which indicates that the small business share of federal contracting dollars is higher than the small business share of industry receipts. Thus, the Federal contracting factor supports maintaining the size standard at the current \$39.5 million level. Using the FPDS–NG data from fiscal years 2018–2020, SBA found that the small business share of federal contracting dollars is still higher than the share of industry receipts. As such, SBA disagrees with the commenter that the Federal government’s contracting practices in this industry disadvantage small firms and that the COVID–19 pandemic has resulted in a contracted pool of small businesses able to contract with the government and is adopting

\$39.5 million as the size standard for NAICS 236220, as proposed.

*Comments on Proposed Changes to Sector 23—Construction*

SBA received one comment to the proposed rule that petitioned SBA to change the measure of size for construction industries from average annual receipts to full time equivalent (FTE) employees. This comment argued that receipts is a misleading measure of size for these industries due to increasing costs for materials, supplies, and labor.

**SBA Response**

SBA disagrees that receipts-based standards do not properly reflect the size of companies in the construction industry. SBA believes that receipts, which represent the value of a

company's entire portfolio of completed work in a given period of time, is a better measure of the size of a construction company to determine its eligibility for Federal contracts set aside for small businesses than the number of employees. Moreover, under SBA's prime contractor performance requirements (see 13 CFR 125.6, limitations on subcontracting), a general construction company must perform as little as 15% of value of work with its own resources, and a specialty trade contractor may perform as little as 25% of work with its own resources. SBA is concerned that employee-based size standards for construction industries could encourage a construction company near the size standard to subcontract more work to others to bypass the limitations on subcontracting and remain technically a small business. Regardless of the amount of work a company subcontracts, it is part of its annual revenue, because the company is responsible for the entire project. In other words, under a receipts-based size standard, the company is not allowed to deduct subcontracting costs from the average annual receipts-based calculation. Under the employee-based size standard, companies would not count their subcontractors' employees to calculate their total number of employees. A company that subcontracts a great deal can have a considerably fewer employees than one that performs more of its work in-house.

Furthermore, in 2004, SBA proposed to replace annual receipts with number

of employees as the basis for size standards for most industries, including construction (see 69 FR 11129 (March 19, 2004)). Commenters in the construction industry generally opposed SBA's proposal for a number of reasons, such as those SBA provides above. In addition, because employee-based size standards represent the average number of employees per pay period for the firm's immediately preceding 12 calendar months, businesses would have to recalculate their size on a monthly basis. Receipts, on the other hand, are calculated over the last five fiscal years for all SBA's programs, except for the loan programs for which receipts are calculated over the last three years. This allows for changes in the construction industry as well as fluctuations in sales due to economic conditions.

Employment data by industry from Economic Census and County Business Patterns and Federal statistical agencies (such as Bureaus of Economic Analysis and Labor Statistics) that SBA uses in its size standards analysis are based on total head counts of part-time, temporary, and full-time employees, not based on FTEs. In other words, part-time employees are counted the same as full-time employees. In addition, using FTEs as a basis of size measure may increase reporting and record keeping requirements for small businesses to qualify for Federal programs. For the reasons outlined above, in this final rule, SBA is not adopting employee-

based size standards for the construction sector.

**Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the proposed rule and given the expressed support for SBA's proposed increases and the absence of any significant adverse comments opposing the proposed increases, SBA is adopting the size standards as proposed in the October 2020 proposed rule, except for the Forest Fire Suppression and Fuel Management exceptions under NAICS 115310. For these exceptions, SBA is adopting a higher size standard of \$30.0 million based on public comments and evaluation of newly available information regarding the industry and firms participating in the fire suppression and related activities. Thus, SBA is increasing size standards for 68 industries in NAICS sectors 11, 21, 22, and 23. This includes 58 industries and two subindustries ("exceptions") in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), three industries in Sector 21 (Quarrying, and Oil and Gas Extraction), three industries in Sector 22 (Utilities), and one industry and one subindustry ("exception") in Sector 23 (Construction). A summary of SBA's size standards revisions in this rule can be found below in Table 3, Summary of Size Standards Revisions in NAICS Sectors 11, 21, 22, and 23.

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
111110	Soybean Farming	\$1.0	\$2.0	\$2.0
111120	Oilseed (except Soybean) Farming	1.0	2.0	2.0
111130	Dry Pea and Bean Farming	1.0	2.5	2.5
111140	Wheat Farming	1.0	2.0	2.0
111150	Corn Farming	1.0	2.25	2.25
111160	Rice Farming	1.0	2.25	2.25
111191	Oilseed and Grain Combination Farming	1.0	2.0	2.0
111199	All Other Grain Farming	1.0	2.0	2.0
111211	Potato Farming	1.0	3.75	3.75
111219	Other Vegetable (except Potato) and Melon Farming	1.0	3.25	3.25
111310	Orange Groves	1.0	3.5	3.5
111320	Citrus (except Orange) Groves	1.0	3.75	3.75
111331	Apple Orchards	1.0	4.0	4.0
111332	Grape Vineyards	1.0	3.5	3.5
111333	Strawberry Farming	1.0	4.75	4.75
111334	Berry (except Strawberry) Farming	1.0	3.25	3.25
111335	Tree Nut Farming	1.0	3.25	3.25
111336	Fruit and Tree Nut Combination Farming	1.0	4.5	4.5
111339	Other Noncitrus Fruit Farming	1.0	3.0	3.0
111411	Mushroom Production	1.0	4.0	4.0
111419	Other Food Crops Grown Under Cover	1.0	4.0	4.0
111421	Nursery and Tree Production	1.0	2.75	2.75
111422	Floriculture Production	1.0	3.25	3.25
111910	Tobacco Farming	1.0	2.25	2.25
111920	Cotton Farming	1.0	2.75	2.75

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
111930	Sugarcane Farming	1.0	4.5	4.5
111940	Hay Farming	1.0	2.25	2.25
111991	Sugar Beet Farming	1.0	2.25	2.25
111992	Peanut Farming	1.0	2.25	2.25
111998	All Other Miscellaneous Crop Farming	1.0	2.25	2.25
112111	Beef Cattle Ranching and Farming	1.0	2.25	2.25
112112	Cattle Feedlots	8.0	19.5	19.5
112120	Dairy Cattle and Milk Production	1.0	3.25	3.25
112210	Hog and Pig Farming	1.0	3.5	3.5
112310	Chicken Egg Production	16.5	15.5	16.5
112320	Broilers and Other Meat Type Chicken Production	1.0	3.0	3.0
112330	Turkey Production	1.0	3.25	3.25
112340	Poultry Hatcheries	1.0	3.5	3.5
112390	Other Poultry Production	1.0	3.25	3.25
112410	Sheep Farming	1.0	3.0	3.0
112420	Goat Farming	1.0	2.25	2.25
112511	Finfish Farming and Fish Hatcheries	1.0	3.25	3.25
112512	Shellfish Farming	1.0	3.25	3.25
112519	Other Aquaculture	1.0	3.25	3.25
112910	Apiculture	1.0	2.75	2.75
112920	Horses and Other Equine Production	1.0	2.5	2.5
112930	Fur-Bearing Animal and Rabbit Production	1.0	3.25	3.25
112990	All Other Animal Production	1.0	2.5	2.5
113110	Timber Tract Operations	12.0	16.5	16.5
113210	Forest Nurseries and Gathering of Forest Products	12.0	18.0	18.0
114111	Finfish Fishing	22.0	20.5	22.0
114112	Shellfish Fishing	6.0	12.5	12.5
114119	Other Marine Fishing	8.0	10.0	10.0
114210	Hunting and Trapping	6.0	7.5	7.5
115111	Cotton Ginning	12.0	14.0	14.0
115112	Soil Preparation, Planting, and Cultivating	8.0	8.5	8.5
115113	Crop Harvesting, Primarily by Machine	8.0	12.0	12.0
115114	Postharvest Crop Activities (except Cotton Ginning)	30.0	27.5	30.0
115115	Farm Labor Contractors and Crew Leaders	16.50	12.5	16.5
115116	Farm Management Services	8.0	13.5	13.5
115210	Support Activities for Animal Production	8.0	9.5	9.5
115310	Support Activities for Forestry	8.0	10.0	10.0
115310 (Exception 1)	Forest Fire Suppression Services	20.5	23.5	30.0
115310 (Exception 2)	Fuels Management Services	20.5	23.5	30.0
213112	Support Activities for Oil and Gas Operations	41.5	38.0	41.5
213113	Support Activities for Coal Mining	22.0	24.0	24.0
213114	Support Activities for Metal Mining	22.0	36.0	36.0
213115	Support Activities for Nonmetallic Minerals (except Fuels) Mining.	8.0	18.0	18.0
221310	Water Supply and Irrigation Systems	30.0	36.0	36.0
221320	Sewage Treatment Facilities	22.0	31.0	31.0
221330	Steam and Air-Conditioning Supply	16.5	26.5	26.5
236115	New Single-Family Housing Construction (except For-Sale Builders).	39.5	8.0	39.5
236116	New Multifamily Housing Construction (except For-Sale Builders).	39.5	25.5	39.5
236117	New Housing For-Sale Builders	39.5	27.5	39.5
236118	Residential Remodelers	39.5	13.5	39.5
236210	Industrial Building Construction	39.5	29.0	39.5
236220	Commercial and Institutional Building Construction	39.5	25.5	39.5
237110	Water and Sewer Line and Related Structures Construction	39.5	20.0	39.5
237120	Oil and Gas Pipeline and Related Structures Construction	39.5	33.0	39.5
237130	Power and Communication Line and Related Structures Construction.	39.5	31.0	39.5
237210	Land Subdivision	30.0	22.0	30.0
237310	Highway, Street, and Bridge Construction	39.5	28.5	39.5
237990	Other Heavy and Civil Engineering Construction	39.5	29.5	39.5
237990 (Exception)	Dredging and Surface Clean-Up Activities	30.0	32.5	32.5
238110	Poured Concrete Foundation and Structure Contractors	16.5	12.5	16.5
238120	Structural Steel and Precast Concrete Contractors	16.5	13.0	16.5
238130	Framing Contractors	16.5	8.5	16.5
238140	Masonry Contractors	16.5	10.5	16.5
238150	Glass and Glazing Contractors	16.5	8.0	16.5
238160	Roofing Contractors	16.5	10.0	16.5
238170	Siding Contractors	16.5	7.0	16.5

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 11, 21, 22, AND 23—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
238190	Other Foundation, Structure, and Building Exterior Contractors.	16.5	13.0	16.5
238210	Electrical Contractors and Other Wiring Installation Contractors.	16.5	13.5	16.5
238220	Plumbing, Heating, and Air-Conditioning Contractors	16.5	12.0	16.5
238290	Other Building Equipment Contractors	16.5	19.5	19.5
238310	Drywall and Insulation Contractors	16.5	11.5	16.5
238320	Painting and Wall Covering Contractors	16.5	10.0	16.5
238330	Flooring Contractors	16.5	10.5	16.5
238340	Tile and Terrazzo Contractors	16.5	7.5	16.5
238350	Finish Carpentry Contractors	16.5	7.5	16.5
238390	Other Building Finishing Contractors	16.5	11.0	16.5
238910	Site Preparation Contractors	16.5	12.0	16.5
238990	All Other Specialty Trade Contractors	16.5	11.5	16.5

Table 4, Summary of Adopted Size Standards Revisions by Sector, below, summarizes the adopted changes to size standards by NAICS sector.

TABLE 4—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
11	Agriculture, Forestry, Fishing and Hunting	64	60	0	4
21	Mining, Quarrying, and Oil and Gas Extraction	4	3	0	1
22	Utilities	3	3	0	0
23	Construction	32	2	0	30
All Sectors		103	68	0	35

**Evaluation of Dominance in Field of Operation**

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.63%, varying from 0.003% to 22.3%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

**Alternatives Considered**

In response to the unprecedented economic impacts of the COVID-19 pandemic on small businesses and Government response, SBA is adopting increases to size standards where the data suggests increases are warranted and retaining all current size standards where the data suggested lowering is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 68 industries and subindustries and decreasing them for 35 industries. Alternative Option Two was to retain all current size standards.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. Lowering size standards in the current environment would run counter to various measures the Federal Government has implemented to help U.S. small businesses and the overall economy recover from the ongoing COVID-19 pandemic. Considering the impacts of the Great Recession and Government actions that followed to support small businesses and the overall economy, SBA also adopted a similar policy of not decreasing size standards

during the first five-year review of size standards, even though the data suggested decreases.

Under Alternative Option Two, given the current COVID-19 pandemic, SBA considered retaining the current level of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two either because the results discussed in the Regulatory Impact Analysis section, below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 68 and retaining 35 size standards adopted in this final rule. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA’s loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

**Compliance With Executive Orders 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including: (1) A statement of the need for the action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the action and the alternatives considered.

**Regulatory Impact Analysis**

*1. What is a need for this regulatory action?*

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small.

Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that size standards revisions for industries being adopted in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace.

The revisions to the existing size standards for 68 industries in NAICS Sectors 11, 21, 22, and 23 are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries can access Federal small business programs that are designed to assist them to become competitive and create jobs.

*2. What are the potential benefits and costs of this regulatory action?*

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

*Changes to Size Standards*

Based on the results from the analysis of the latest industry and Federal contracting data, evaluation of public comments and input to the proposed rule, as well as consideration of impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 103 industries in Sectors 11, 21, 22, and 23 that have receipts-based size standards, SBA is increasing size standards for 68 industries (including exceptions), and maintaining current size standards for the remaining 35 industries.

*The Baseline*

For purposes of this regulatory action, the baseline represents maintaining the "status quo," *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels

of benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available when this rulemaking was developed), of a total of about 2.7 million businesses in industries in Sectors 11, 21, 22, and 23 for which SBA is increasing their receipts-based size standards, 96.9% are considered small under the current size standards. That percentage varies from 95.5% in Sector 21 to 98.5% in Sector 23. Based on the data from FPDS–NG for fiscal years 2018–2020, about 15,567 unique firms in those industries received at least one Federal contract during that period, of which 85% were small under the current size standards. A total of about \$39 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 45.3% of the dollars awarded went to small businesses. For these sectors, providing contract dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 81.8% were awarded through various small business set-aside programs and 18.2% were awarded through non-set aside contracts.

Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of nearly 7,250 7(a) and 504 loans in that period, totaling about \$2.3 billion, of which 84.8% was issued through the 7(a) program and 15.2% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 174 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about \$8 million on an annual basis.<sup>2</sup> Table 5, Baseline for All

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts.

Continued

Industries, provides these baseline results by NAICS sector.

TABLE 5—BASELINE FOR ALL INDUSTRIES

	Sector 11	Sector 21	Sector 22	Sector 23	Total
Baseline All Industries (current size standards) .....	64	4	3	32	103
Total firms (2012 Economic Census) .....	2,122,631	8,196	3,673	587,173	2,721,673
Total small firms under current size standards (2012 Economic Census) .....	2,046,316	7,828	3,586	578,430	2,636,160
Small firms as % of total firms .....	96.4%	95.5%	97.6%	98.5%	96.9%
Total contract dollars (\$ million) (FPDS-NG, FY2018-2020) .....	\$675	\$111	\$401	\$37,913	\$39,099
Total small business contract dollars under current standards (\$ million) (FPDS-NG, FY2018-2020) .....	\$478	\$25	\$75	\$17,119	\$17,698
Small business dollars as % of total dollars (FPDS-NG, FY2018-2020) .....	70.9%	22.5%	18.7%	45.2%	45.3%
Total no. of unique firms getting contracts (FPDS-NG, FY2018-2020) .....	3,259	266	591	11,901	15,567
Total no. of unique small firms getting small business contracts (FPDS-NG, FY2018-2020) .....	2,883	188	447	10,063	13,231
Small business firms as % of total firms (FPDS-NG, FY2018-2020) .....	88.5%	70.7%	75.6%	84.6%	85.0%
No. of 7(a) and 504/CDC loans (FY2018-2020) .....	563	70	35	6,579	7,247
Amount of 7(a) and 504 loans (\$ million) (FY2018-2020) ..	\$350	\$42	\$11	\$1,944	\$2,347
No. of EIDL loans (FY2018-2020) * .....	48	2	1	123	174
Amount of EIDL loans (\$ million) (FY2018-2020) * .....	\$1.2	\$0.1	\$0.1	\$6.6	\$8.0

\* Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

*Increases to Size Standards*

As stated above, of 103 receipts-based size standards in NAICS Sectors 11, 21, 22, and 23 that are reviewed in this rule, based on the results from analyses of latest industry and Federal market data, impacts of size standards changes on small businesses as well as considerations of the impacts of the COVID-19 pandemic and public comments to the proposed rule, SBA is increasing 68 and maintaining 35 size standards. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards adopted in this final rule.

The results of regulatory impact analyses SBA provided in the October 2020 proposed rule were based on the FPDS-NG and SBA loan data for fiscal years 2016-2018. In this final rule, SBA is updating the impact analysis results by using the FPDS-NG and SBA loan data for fiscal years 2018-2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

*Benefits of Increasing Size Standards*

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining eligibility for a

longer period. These include SBA's business loan programs, Economic Injury Disaster Loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/ Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 68 industries in NAICS Sectors 11, 21, 22, and 23 for which it is increasing size standards, more than 49,400 firms (see

Table 6, below) not small under the current size standards will become small under the revised size standards and therefore become eligible for these programs. That represents about 2.4% of all firms classified as small under the current size standards in industries for which SBA is increasing size standards. The revised size standards will result in an increase to the small business share of total receipts in those industries from 35.6% to 55.2%.

With more businesses qualifying as small under the revised size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs. Based on the FPDS-NG data for fiscal years 2018-2020, SBA estimates that about 90 firms that are active in Federal contracting in those industries will gain small business status under the revised size standards. Based on the same data, SBA estimates that those newly qualified small businesses under the increases to 68 size standards could receive Federal small business contracts totaling about \$13 million annually. That represents a 1.9% increase to small

In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount

using FY 2016-18 data to the FY 2019-20 data to obtain the amount attributable to the EIDL loans.

business dollars from the baseline. Table 6, Impacts of Increasing Size Standards, provides these results by NAICS sector.

The added competition from more businesses qualifying as small can result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies

likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the revised size standards, HUBZone firms might end up getting more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such

cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 15 7(a) and 504 loans totaling about \$8.6 million could be made to these newly qualified small businesses in those industries under the revised size standards. That represents a 2.3% increase to the loan amount compared to the baseline.

TABLE 6—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries with increases to size standards .....	60	3	3	2	68
Total current small businesses in industries with increases to size standards (2012 Economic Census) .....	2,016,066	536	3,586	5,413	2,025,601
Additional firms qualifying as small under revised standards (2012 Economic Census) .....	49,352	21	9	34	49,415
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	2.4%	3.9%	0.2%	0.6%	2.4%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG, FY2018–2020) <sup>1</sup> .....	2,866	141	447	501	3,919
Additional small business firms getting small business status (FPDS–NG, FY2018–2020) <sup>1</sup> .....	64	1	13	14	90
% increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG, FY2018–2020) .....	2.2%	0.7%	2.9%	2.8%	2.3%
Total small business contract dollars under current standards in industries with increases to size standards (\$ million) (FPDS–NG, FY2018–2020) .....	\$475.8	\$4.7	\$75.0	\$113.4	\$668.9
Estimated small business dollars available to newly qualified small firms (Using avg dollars obligated to SBs) (\$ million) FPDS–NG, FY 2018–2020) <sup>2</sup> .....	\$6.5	\$0.0	\$3.3	\$3.0	\$12.8
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards .....	1.4%	0.4%	4.5%	2.6%	1.9%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY2018–2020) ....	512	5	35	84	636
Total amount of 7(a) and 504 loans to small businesses in industries with increases to size standards (\$ million) (FY2018–2020) .....	\$317.9	\$2.0	\$11.3	\$33.7	\$364.9
Estimated no. of 7(a) and 504 loans to newly qualified small firms .....	12	1	1	1	15
Estimated 7(a) and 504 loan amount to newly qualified small firms (\$ million) .....	\$7.5	\$0.4	\$0.3	\$0.4	\$8.6
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	2.3%	20.0%	2.9%	1.2%	2.3%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY2018–2020) <sup>3</sup> .....	45	0	1	4	50
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY2018–2020) <sup>3</sup> .....	\$1.5	\$0.0	\$0.1	\$0.2	\$1.8
Estimated no. of EIDL loans to newly qualified small firms <sup>3</sup> .....	1	0	1	1	3
Estimated EIDL loan amount to newly qualified small firms (\$ million) <sup>3</sup> .....	\$0.01	\$0	\$0.1	\$0.01	\$0.1
% increase to EIDL loan amount relative to the total amount of EIDL loan amount in industries with increases to size standards <sup>3</sup> .....	2.2%	0.0%	100.0%	25.0%	8.1%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup>Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Newly qualified small businesses will also benefit from the SBA's EIDL program. Because the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL loan data, SBA estimates that, on an annual basis, the newly defined small businesses under the increases of 68 size standards could receive three EIDL loans, totaling about \$0.1 million. Additionally, the newly defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

#### *Costs of Increasing Size Standards*

Besides having to register in *sam.gov* to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status because of increases to size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. This rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly qualified small businesses could become active in Federal procurement, the increases to size standards may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé program. With an expanded pool of small businesses, it is likely that Federal

agencies would set aside more contracts for small businesses under the revised size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number of size protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013), as compared to about 500 during fiscal years 2018–2020 when the increases to size standards were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the revised size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the revised size standards. However, the additional costs associated with fewer bidders are expected to be minor because, by law, procurements may be set aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more

contracts for small businesses in response to the availability of a larger pool of small businesses under the revised size standards, HUBZone firms might actually end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

#### *Transfer Impacts of Increasing Size Standards*

The increases to 68 size standards that are adopted in this final rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the revised size standards, some unrestricted Federal contracts which would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from more advanced businesses qualifying as small under the revised size standards. This impact may be offset by a greater number of procurements being set aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

#### *3. What alternatives have been considered?*

Under OMB Circular A-4, SBA is required to consider regulatory alternatives to the changes in this rule. In this section, SBA describes and analyzes two such alternatives to the changes in this rule. Alternative Option One to the changes in this rule, a more



stringent alternative, would adopt size standards based solely on the analytical results. In other words, the size standards of 68 industries or subindustries (“exceptions”) for which the analytical results, as presented in Table 4 of the October 2020 proposed rule, suggest raising them would be raised. However, the size standards of 35 industries for which the analytical results suggest lowering them would be lowered. Alternative Option Two would retain all size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses and presents the net impacts of each option.

*Alternative Option One: Adopting All Calculated Size Standards*

As discussed elsewhere in this rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA’s procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical

results; (2) Adopting size standards based on the analytical results would also promote consistency and predictability in SBA’s implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set-aside opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the “Size Standards Methodology” white paper, in addition to adopting all results of the primary analysis, SBA evaluates other relevant factors, as needed, such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We discussed already the benefits, costs, and transfer impacts of increasing 68 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 35 size standards based on the analytical results.

*Benefits of Decreasing Size Standards Under Alternative Option One*

The most significant benefit to businesses from decreases to size standards when the SBA’s analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA’s business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA’s business development programs, such as small business, 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, and SDVOSB Programs. The adoption of calculated size standards diminishes the

risk of awarding contracts to firms which are not small anymore.

Decreasing size standards may reduce the administrative costs of the Federal Government, because the risks of awarding set-aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also diminish the risks of providing SBA’s loans to firms that do not need them the most. This may provide a better chance for smaller small firms to grow and benefit from the opportunities available on the Federal marketplace, and strengthen the small business industrial base for the Federal Government.

*Costs of Decreasing Size Standards Under Alternative Option One*

Table 7, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 35 industries based solely on the analytical results. Based on the 2012 Economic Census, about 5,500 (0.9%) firms would lose their small business status under this option. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, nearly 500 (5.0%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts.

With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business programs. For example, during fiscal years 2018–2020, agencies awarded, on an annual basis, about \$17 billion in small business contracts in those 35 industries for which SBA considered decreasing size standards. Lowering size standards in those industries could reduce Federal contract dollars awarded to small businesses by about \$1 billion or 6% relative to the baseline level, of which 99% was accounted for by the industries in the construction sector (NAICS 23).

TABLE 7—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	4	1	0	30	35
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	30,250	7,292	0	573,017	610,559
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	17	16	0	5,479	5,512

TABLE 7—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 11	Sector 21	Sector 22	Sector 23	Total
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	0.1%	0.2%	0.0%	1.0%	0.9%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG, FY2018–2020) <sup>1</sup> ....	20	48	0	9,787	9,842
Estimated number of small business firms that would have lost small business status in the decreases that SBA considered (FPDS–NG, FY2018–2020) <sup>1</sup> .....	0	0	0	491	491
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG, FY2018–2020) .....	0.0%	0.0%	0.0%	5.0%	5.0%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS–NG FY2018–2020) .....	\$2.4	\$20.2	\$0.0	\$17,006	\$17,029
Estimated small business dollars not available to firms losing small business status (Using avg dollars obligated to SBs) (\$ million) <sup>1</sup> (FPDS–NG FY 2018–2020) <sup>2</sup> .....	\$0.0	\$0.0	\$0.0	\$1,019	\$1,019
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) .....	0.0%	0.0%	0.0%	6.0%	6.0%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY2018–2020) .....	51	65	0	6,495	6,611
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY2018–2020) .....	\$32.0	\$40.8	\$0.0	\$1,910	\$1,982
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	1	0	0	4	5
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status (\$ million) .....	\$0.6	\$0.0	\$0.0	\$1.2	\$1.8
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	0.2%	0.0%	0.0%	0.1%	0.1%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY2018–2020) <sup>3</sup> .....	21	3	0	193	217
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY2018–2020) <sup>3</sup> .....	\$0.5	\$0.2	\$0.0	\$9.7	\$10.4
Estimated no. of EIDL loans not available to firms that would have lost small business status <sup>3</sup> .....	1	1	0	1	3
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) <sup>3</sup> .....	\$0.02	\$0.1	\$0.0	\$0.1	\$0.1
% decrease to EIDL loan amount relative to the total EIDL loan amount in industries with decreases to size standards <sup>3</sup> .....	4.8%	33.3%	0.0%	0.5%	1.3%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Because of the importance of the construction sector for Federal procurement and the immediate impact on businesses that will see their status as small changed relatively fast, SBA would adopt mitigating measures to reduce the negative impact under this option. SBA could adopt one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results, (2) Decrease size standards by a smaller amount than

the calculated threshold, and (3) Retain the size standards at their current levels.

Nevertheless, because Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity is likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement

goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 7, decreases to size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about 5 7(a) and 504 loans with total amounts of \$1.8 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 0.1% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry based size standards could still qualify for SBA's loans under the tangible net worth and net income based alternative size standard.

Businesses losing small business status would also be impacted by way of access to loans through SBA's EIDL loan program. However, SBA expects such impact to be minimal. For example, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about 3 EIDL loans with total amounts of \$0.1 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). That represents about 1.3% decrease of the loan amounts compared to the baseline. Because this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a more meaningful estimate of the immediate impact.

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced

fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

*Transfer Impacts of Decreasing Size Standards Under Alternative Option One*

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the increases to size standards, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will stay the same. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts.

With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large firms may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses

under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer firms qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify such impacts.

*Net Impact of Alternative Option One*

To estimate the net impacts of Alternative Option One, SBA used the same methodology used to evaluate the impacts of increasing size standards (Table 6). However, under Alternative Option One, SBA used the calculated size standards instead of the revised size standards to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 6. Table 7 and Table 8, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impacts of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option One, respectively.

Based on the 2012 Economic Census, SBA estimates that in 103 industries in NAICS Sectors 11, 21, 22, and 23 for which the analytical results suggested to change size standards, in aggregate, about 43,900 firms (see Table 8), would become small under the Alternative Option One. That represents about 1.7% of all firms classified as small under the current size standards. That is about 5,500 fewer firms qualifying as small under Alternative Option One, which represents an 11.0% reduction from about 49,400 firms that would qualify as small (see Table 6) under the proposal being adopted in this final rule (*i.e.*, increasing 68 and retaining 35 size standards).

TABLE 8—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 11	Sector 21	Sector 22	Sector 23	Total
No. of industries with changes to size standards .....	64	4	3	32	103
Total no. of small business under the current size standards (2012 Economic Census) .....	2,046,316	7,828	3,586	578,430	2,636,160
Additional firms qualifying as small under revised size standards (2012 Economic Census) .....	49,335	5	9	– 5,445	43,902
% of additional firms qualifying as small relative to total current small businesses .....	2.4%	0.1%	0.2%	– 0.9%	1.7%
No. of current unique small firms getting small business contracts (FPDS–NG, FY2018–2020) <sup>1</sup> .....	2,883	188	447	10,063	13,231
Additional small firms getting small business status (FPDS–NG, FY2018–2020) <sup>1</sup> .....	63	1	13	– 479	– 407
% increase to small firms relative to current unique small firms getting small business contracts (FPDS–NG, FY2018–2020) .....	2.2%	0.5%	2.9%	– 4.8%	– 3.1%

TABLE 8—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 11	Sector 21	Sector 22	Sector 23	Total
Total small business contract dollars under current size standards (\$ million) (FPDS–NG, FY 2018–2020) .....	\$478	\$25	\$75	\$17,119	\$17,698
Estimated small business dollars available to newly qualified small firms (\$ million) (FPDS–NG, FY 2018–2020) <sup>2</sup> .....	\$6.5	\$0.0	\$3.3	–\$1,016	–\$1,006
% increase to dollars relative to total small business contract dollars under current size standards .....	1.4%	0.1%	4.5%	–5.9%	–5.7%
Total no. of 7(a) and 504 loans to small businesses (FY2018–2020) .....	563	70	35	6,579	7,247
Total amount of 7(a) and 504 loans to small businesses (FY2018–2020) .....	\$350	\$42	\$11	\$1,944	\$2,347
Estimated no. of additional 7(a) and 504 loans to newly qualified small firms .....	11	1	1	–3	10
Estimated additional 7(a) and 504 loan amount to newly qualified small firms (\$ million) .....	\$6.8	\$0.4	\$0.3	–\$0.8	\$6.8
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	2.2%	20.0%	2.9%	1.1%	2.3%
Total no. of EIDL loans to small businesses (FY2018–2020) <sup>3</sup> .....	48	2	1	123	174
Total amount of EIDL loans to small businesses (\$ million) (FY2018–2020) <sup>3</sup> .....	\$1.2	\$0.1	\$0.1	\$6.6	\$8.0
Estimated no. of additional EIDL loans to newly qualified small firms <sup>3</sup> .....	0	–1	1	0	0
Estimated additional EIDL loan amount to newly qualified small firms (\$ million) <sup>3</sup> .....	\$0.01	–\$0.06	\$0.07	–\$0.01	\$0.01
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses in industries with changes in size standards <sup>3</sup> .....	0.8%	–79.8%	100.0%	–0.1%	0.1%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer’s size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 400 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from the construction sector. This represents a decrease of about 3.1% of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about \$1.0 billion of Federal procurement dollars would not be available to firms losing their small status. This represents a decrease of 5.7% from the baseline. Again, a large amount of the loses are accounted for by the construction sector.

Based on the SBA’s loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may increase by about 10 loans, and the loan amounts by about \$6.8 million (see Table 8). This represents a 2.3% increase to the loan amount relative to the baseline.

Firms’ participation under the SBA’s EIDL loan program will be affected as well. Because the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

However, based on the historical trends of the EIDL loan data, SBA estimates that there will be no change to the total number of EIDL loans, while the total loan amount will increase by about \$0.1 million. This represents a 0.1% increase of the loan amounts relative to the baseline. Table 8 provides these results by NAICS sector.

*Alternative Option Two: Retaining All Current Size Standards*

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (i.e., zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (e.g., access to set-aside contracts and capital) that become available to them under the option of increasing 68 and retaining 35 size standards adopted in this final rule.

Moreover, retaining all size standards under Alternative Option Two would also be contrary to the SBA’s statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small businesses from small business benefits.

**Congressional Review Act**

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB’s Office of Information and Regulatory Affairs has determined that

this rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### Final Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities.

This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this rule. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA’s 7(a), 504 and disaster loan programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What are SBA’s description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

#### 1. *What is the need for and objective of the rule?*

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries covered by this rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

#### 2. *What are SBA’s description and estimate of the number of small businesses to which the rule will apply?*

Based on data from the 2012 Economic Census, SBA estimates that there are about 2.02 million small firms covered by this rulemaking under industries with revised size standards. SBA estimates that an additional 49,415 businesses will become small under this rulemaking.

#### 3. *What are the projected reporting, record keeping and other compliance requirements of the rule?*

The revised size standards impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor’s current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. Changing size standards alters the access to SBA’s programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

#### 4. *What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?*

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA’s size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA’s size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA’s regulations allow Federal agencies to develop different size standards if they believe that SBA’s size standards are not appropriate for their programs, with the approval of SBA’s Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

#### 5. *What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?*

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no

practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 68 and maintaining 35 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 68 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 35 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status, especially in the construction sector. Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 68 and decreasing 35 size standards. Retaining all size standards at their current levels would be more onerous for the small businesses than the option of increasing 68 and retaining 35 size standards. Additionally, for the first time, SBA evaluated 46 agricultural industries and, based on analytical results presented in Table 4 of the October 2020 proposed rule, proposed to increase the size standards for all of them. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses within those industries in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

### Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs

Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in early 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled “Size Standards Methodology” and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review and comments. The “Size Standards Methodology” white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this rule.

**Executive Order 12988**

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

**Executive Order 13132**

For purposes of Executive Order 13132, SBA has determined that this rule will not have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

**Paperwork Reduction Act**

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. Section 121.201 is amended in the table “Small Business Size Standards by NAICS Industry” as follows:

- a. Revise subsector 111;
- b. In subsector 112, revise the entries for “112111”, “112112”, “112120”, “112210”, “112320” through “112340”, “112390”, “112410”, “112420”, “112511”, “112512”, “112519”, “112910” through “112930”, and “112990”;
- c. In subsector 113, revise the entries for “113110” and “113210”;
- d. In subsector 114, revise the entries for “114112”, “114119”, and “114210”;
- e. In subsector 115, revise the entries for “115111” through “115113”, “115116”, “115210” “115310”, “115310 (Exception 1)”, and “115310 (Exception 2)”;
- f. In subsector 213, revise the entries for “213113” through “213115”;
- g. In subsector 221, revise the entries for “221310” through “221330”;
- h. In subsector 237, revise the entries for “237990” and “237990 (Exception)”;
- i. In subsector 238, revise the entry for “238290”;
- j. In subsector 511, revise the entry for “511210”;
- k. Revise the entry for “Sector 92” at the end of the table;
- l. Redesignate footnote 17 as footnote 1 and revise it;
- m. Revise footnote 2;
- n. Redesignate footnote 20 as footnote 15; and
- o. Redesignate footnote 19 as footnote 17.

The revisions read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sector 11—Agriculture, Forestry, Fishing and Hunting Subsector 111—Crop Production</b>			
111110	Soybean Farming	\$2.0	
111120	Oilseed (except Soybean) Farming	2.0	
111130	Dry Pea and Bean Farming	2.5	
111140	Wheat Farming	2.0	
111150	Corn Farming	2.25	
111160	Rice Farming	2.25	
111191	Oilseed and Grain Combination Farming	2.0	
111199	All Other Grain Farming	2.0	
111211	Potato Farming	3.75	
111219	Other Vegetable (except Potato) and Melon Farming	3.25	
111310	Orange Groves	3.5	
111320	Citrus (except Orange) Groves	3.75	
111331	Apple Orchards	4.0	
111332	Grape Vineyards	3.5	
111333	Strawberry Farming	4.75	
111334	Berry (except Strawberry) Farming	3.25	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
111335	Tree Nut Farming	3.25	
111336	Fruit and Tree Nut Combination Farming	4.5	
111339	Other Noncitrus Fruit Farming	3.0	
111411	Mushroom Production	4.0	
111419	Other Food Crops Grown Under Cover	4.0	
111421	Nursery and Tree Production	2.75	
111422	Floriculture Production	3.25	
111910	Tobacco Farming	2.25	
111920	Cotton Farming	2.75	
111930	Sugarcane Farming	4.5	
111940	Hay Farming	2.25	
111991	Sugar Beet Farming	2.25	
111992	Peanut Farming	2.25	
111998	All Other Miscellaneous Crop Farming	2.25	
<b>Subsector 112—Animal Production and Aquaculture</b>			
112111	Beef Cattle Ranching and Farming	2.25	
112112	Cattle Feedlots	19.5	
112120	Dairy Cattle and Milk Production	3.25	
112210	Hog and Pig Farming	3.5	
	* * * * *		
112320	Broilers and Other Meat Type Chicken Production	3.0	
112330	Turkey Production	3.25	
112340	Poultry Hatcheries	3.5	
112390	Other Poultry Production	3.25	
112410	Sheep Farming	3.0	
112420	Goat Farming	2.25	
112511	Finfish Farming and Fish Hatcheries	3.25	
112512	Shellfish Farming	3.25	
112519	Other Aquaculture	3.25	
112910	Apiculture	2.75	
112920	Horses and Other Equine Production	2.5	
112930	Fur-Bearing Animal and Rabbit Production	3.25	
112990	All Other Animal Production	2.5	
<b>Subsector 113—Forestry and Logging</b>			
113110	Timber Tract Operations	16.5	
113210	Forest Nurseries and Gathering of Forest Products	18.0	
	* * * * *		
<b>Subsector 114—Fishing, Hunting and Trapping</b>			
	* * * * *		
114112	Shellfish Fishing	12.5	
114119	Other Marine Fishing	10.0	
114210	Hunting and Trapping	7.5	
<b>Subsector 115—Support Activities for Agriculture and Forestry</b>			
115111	Cotton Ginning	14.0	
115112	Soil Preparation, Planting, and Cultivating	8.5	
115113	Crop Harvesting, Primarily by Machine	12.0	
	* * * * *		
115116	Farm Management Services	13.5	
115210	Support Activities for Animal Production	9.5	
115310	Support Activities for Forestry	10.0	
115310 (Exception 1)	Forest Fire Suppression <sup>1</sup>	130.0	
115310 (Exception 2)	Fuels Management Services <sup>1</sup>	130.0	
<b>Sector 21—Mining, Quarrying, and Oil and Gas Extraction</b>			

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Subsector 213—Support Activities for Mining</b>			
213113	Support Activities for Coal Mining	24.0	
213114	Support Activities for Metal Mining	36.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels) Mining	18.0	
<b>Sector 22—Utilities Subsector 221—Utilities</b>			
221310	Water Supply and Irrigation Systems	36.0	
221320	Sewage Treatment Facilities	31.0	
221330	Steam and Air-Conditioning Supply	26.5	
<b>Sector 23—Construction</b>			
<b>Subsector 237—Heavy and Civil Engineering Construction</b>			
237990	Other Heavy and Civil Engineering Construction	39.5	
237990 (Exception)	Dredging and Surface Cleanup Activities <sup>2</sup>	≥33.0	
<b>Subsector 238—Specialty Trade Contractors</b>			
238290	Other Building Equipment Contractors	19.5	
<b>Subsector 511—Publishing Industries (except Internet)</b>			
511210	Software Publishers <sup>15</sup>	15 41.5	
<b>Sector 92—Public Administration<sup>17</sup></b>			

**Footnotes**

<sup>1</sup> NAICS code 115310—Support Activities for Forestry: Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

<sup>2</sup> NAICS code 237990—Dredging: To be considered small for purposes of Government procurement, a firm or its similarly situated subcontractors must perform at least 40 percent of the volume dredged with their own equipment or equipment owned by another small dredging concern.

<sup>15</sup> NAICS code 511210—For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to § 121.1203(d) should be classified under this NAICS code.

<sup>17</sup> NAICS Sector 92—Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local Government agencies which administer and oversee Government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a Government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a Government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under NAICS industry 56161, Investigation, Guard, and Armored Car Services.



Isabella Casillas Guzman,

Administrator.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AG90

#### Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Transportation and Warehousing, Information, Finance and Insurance, and Real Estate and Rental and Leasing. Specifically, SBA is increasing the size standards for 45 industries in those sectors, including 18 industries in NAICS Sector 48-49 (Transportation and Warehousing), eight industries in NAICS Sector 51 (Information), ten industries in NAICS Sector 52 (Finance and Insurance), and nine industries in NAICS Sector 53 (Real Estate and Rental and Leasing).  
**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size

standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards, SBA reviewed all receipt-based size standards in NAICS Sectors 48-49, 51, 52, and 53 to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published in the October 2, 2020, issue of the **Federal Register** (85 FR 62372) a proposed rule

<sup>1</sup> On December 21, 2021, the U. S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . . .” In the near future, SBA will issue a proposed rule to adopt the OMB’s NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

to increase the size standards for 18 industries in NAICS Sector 48-49 (Transportation and Warehousing), eight industries in NAICS Sector 51 (Information), ten industries in NAICS Sector 52 (Finance and Insurance), and nine industries in NAICS Sector 53 (Real Estate and Rental and Leasing). In this final rule, SBA is adopting the proposed size standards from the October 2020 proposed rule without change.

In conjunction with the current comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s Size Standards Methodology is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each receipt-based industry in NAICS Sectors 48-49, 51, 52, and 53, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest

firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association’s (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business

level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2016–2018. Table 4 of the proposed rule, Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 124 industries and two subindustries (exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on

the five primary factors from Table 4 of the proposed rule supported increasing size standards for 45 industries, decreasing size standards for 69 industries, and retaining size standards for nine industries and two subindustries. Additionally, SBA retained the size standard for NAICS 491110 (Postal Service) which the Economic Census does not cover. Table 1, Summary of Calculated Size Standards, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards unchanged
48–49	Transportation and Warehousing	43	18	23	2
51	Information	19	8	9	2
52	Finance and Insurance*	39	* 10	24	5
53	Real Estate and Rental and Leasing	25	9	13	3
All Sectors		126	45	69	12

\* Includes five assets-based size industries.

In the October 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size standards. To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA’s loan programs, SBA analyzed FPDS–NG data for fiscal years 2018–2020 and internal data on its guaranteed loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In the proposed rule, SBA sought comments on its proposal to increase size standards for 45 industries and retain the current size standards for the remaining 81 industries or subindustries in Sectors 48–49, 51, 52, and 53. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule, whether the decision not to lower any size standards is justified by the COVID–19 pandemic, whether the equal weighting of

individual factors to derive an industry size standard is appropriate, and whether the data sources used were appropriate or sufficient. SBA also sought comments on its proposal to maintain a common size standard for industries within Subsector 525 and assets-based size standards within NAICS Industry Groups 5221 and 5222. SBA also requested comments on its proposal to retain the size standard for the exception to NAICS 488510 (Non-Vessel Owning Common Carriers and Household Good Forwarders) and NAICS 491110 (Postal Service).

**Discussion of Comments**

SBA received a total of four comments to the proposed rule from a wide range of entities including an individual, a business, and two trade associations. Of the four comments received, one comment referenced all sectors covered by the proposed rule, one comment referenced NAICS 531210 (Offices of Real Estate Agents and Brokers), one comment referenced NAICS 522130 (Credit Unions), and one comment referenced Sector 23 (construction) which is not covered under this proposed rule. SBA did not evaluate the comment referencing Sector 23 in this final rule, instead, SBA will evaluate that comment under the final rule covering the construction industry (see RIN 3245–AG90 on [www.regulations.gov](http://www.regulations.gov)). The four comments to the proposed rule are available at [www.regulations.gov](http://www.regulations.gov) (RIN

3245–AG90) and are summarized and discussed below.

*Comments on Proposed Changes to All Sectors*

One commenter maintained that SBA’s proposed changes to size standards would allow the entry of large businesses to the SBA’s low-interest loan and contracting programs reserved by Congress for small businesses. This commenter further argued that the proposed rule is contrary to the statutory mandate given to the SBA by Congress in this regard. Citing these reasons, the commenter asserted that the proposed rule should be withdrawn.

**SBA Response**

In the proposed rule, SBA proposed to increase size standards for 45 industries, including eighteen (18) industries in NAICS Sector 48–49 (Transportation and Warehousing), eight (8) industries in NAICS Sector 51 (Information), ten (10) industries in NAICS Sector 52 (Finance and Insurance), and nine (9) industries in NAICS Sector 53 (Real Estate and Rental and Leasing). With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the increases to size standards, thereby increasing opportunities for all small businesses, including the smaller small businesses. Also, the Administration’s recent decision to increase the Government-wide Small Disadvantaged Business

(SDB) goal from the current 5% to 11% in fiscal year 2021 (increasing to 15% by fiscal year 2025) is likely to drive agencies to set aside more contracts to small businesses in coming years.

SBA does not agree with the comment that the proposed rule is contrary to the Congressional mandate given to SBA and should not be issued. Pursuant to section 1344 of the Small Business Jobs Act of 2010 (the Jobs Act) (Pub. Law 111–240), SBA is statutorily mandated to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. The proposed rule was part of the second five-year review of size standards in accordance with the Jobs Act. SBA believes that proposed size standards revisions for industries being reviewed in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace. For the above reasons, SBA is adopting the proposed size standard without change.

*Comments on Proposed Changes to NAICS 531210—Offices of Real Estate Agents and Brokers*

SBA received a comment from a small business concern specializing in providing lease brokerage and other transaction services to Federal agencies. This comment was in full support of the proposed increase to the size standard for NAICS 531210 (Offices of Real Estate Agents and Brokers) from \$8 million to \$13 million in average annual receipts. The commenter believed that such an increase is totally consistent with the Government’s policy of providing maximum practicable opportunities to small businesses.

The commenter argued that the proposed increase to the size standard

for NAICS 531210 would ensure that small businesses would be able to retain access to the Federal small business assistance programs. It would also ensure that Federal agencies have a larger pool of small businesses from which to draw for their small business procurement programs, thereby increasing competition and lowering prices to the Government. Finally, the commenter believed that the proposed increase would make the size standard for NAICS 531210 more consistent with the growth of the industry in recent years.

**SBA Response**

SBA agrees with the commenter that the proposed size standard will help to provide maximum practicable opportunities to small businesses in this industry while also expanding the pool of small businesses from which the Federal Government can draw from for their small business procurement programs. Given the expressed support for SBA’s proposed increase to the size standard for NAICS 531210 and the absence of any significant adverse comments opposing the increase, SBA is adopting \$13 million in average annual receipts as the size standard for this NAICS code.

*Comments on Proposed Changes to NAICS 522130—Credit Unions*

SBA received one comment, on behalf of the National Association of Federally Insured Credit Unions (NAFCU), supporting SBA’s proposed increase to all size standards generally, and in particular the size standard for NAICS 522130 (Credit Unions) increasing from \$600 million to \$750 million in average assets. This comment is in support of SBA’s proposed size standard increase. As the commenter maintained, although credit unions are not-for-profit entities

and do not qualify for the SBA’s lending programs, the proposed increases to size standards would provide credit unions that are SBA lenders with an opportunity to provide lending to more newly-qualified small businesses, thereby helping local communities to thrive, promote innovation, and provide jobs.

**SBA Response**

SBA agrees with the commenter that the proposed changes to size standards will increase the number of businesses eligible to participate in SBA’s financial assistance programs. SBA also agrees with the commenter that SBA’s financial assistance programs can have wide-ranging positive impacts to individuals, businesses, and communities. Given the expressed support for SBA’s proposed increase to the size standard for NAICS 522130 and the absence of any significant adverse comments opposing the increase, SBA is adopting, as proposed, 750 million in average assets as the size standard for NAICS 522130.

**Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the proposed rule and on its analyses of industry and Federal contracting factors using the latest available data when the proposed rule was prepared, SBA is adopting the size standards, as proposed in the October 2020 proposed rule. Thus, SBA is increasing 45 size standards, including 18 in NAICS Sector 48–49, eight in NAICS Sector 51, ten in NAICS Sector 52, and nine in NAICS Sector 53. A summary of SBA’s size standards revisions in this rule can be found below in Table 2, Summary of Size Standards Revisions in NAICS Sectors 48–49, 51, 52, and 53.

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
481219 .....	Other Nonscheduled Air Transportation .....	16.5 .....	22.0 .....	22.0
484110 .....	General Freight Trucking, Local .....	30.0 .....	9.0 .....	30.0
484121 .....	General Freight Trucking, Long-Distance, Truckload.	30.0 .....	22.0 .....	30.0
484122 .....	General Freight Trucking, Long-Distance, Less Than Truckload.	30.0 .....	38.0 .....	38.0
484210 .....	Used Household and Office Goods Moving	30.0 .....	21.0 .....	30.0
484220 .....	Specialized Freight (except Used Goods) Trucking, Local.	30.0 .....	15.0 .....	30.0
484230 .....	Specialized Freight (except Used Goods) Trucking, Long-Distance.	30.0 .....	22.0 .....	30.0
485111 .....	Mixed Mode Transit Systems .....	16.5 .....	25.5 .....	25.5
485112 .....	Commuter Rail Systems .....	16.5 .....	41.5 .....	41.5
485113 .....	Bus and Other Motor Vehicle Transit Systems.	16.5 .....	28.5 .....	28.5
485119 .....	Other Urban Transit Systems .....	16.5 .....	33.0 .....	33.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
485210	Interurban and Rural Bus Transportation	16.5	28.0	28.0
485310	Taxi Service	16.5	13.0	16.5
485320	Limousine Service	16.5	12.5	16.5
485410	School and Employee Bus Transportation	16.5	26.5	26.5
485510	Charter Bus Industry	16.5	13.0	16.5
485991	Special Needs Transportation	16.5	13.0	16.5
485999	All Other Transit and Ground Passenger Transportation.	16.5	16.0	16.5
486210	Pipeline Transportation of Natural Gas	30.0	36.5	36.5
486990	All Other Pipeline Transportation	40.5	31.5	40.5
487110	Scenic and Sightseeing Transportation Land	8.0	18.0	18.0
487210	Scenic and Sightseeing Transportation Water	8.0	12.5	12.5
487990	Scenic and Sightseeing Transportation Other.	8.0	22.0	22.0
488111	Air Traffic Control	35.0	30.5	35.0
488119	Other Airport Operations	35.0	25.5	35.0
488190	Other Support Activities for Air Transportation.	35.0	27.5	35.0
488210	Support Activities for Rail Transportation	16.5	30.0	30.0
488310	Port and Harbor Operations	41.5	38.0	41.5
488320	Marine Cargo Handling	41.5	39.0	41.5
488330	Navigational Services to Shipping	41.5	26.5	41.5
488390	Other Support Activities for Water Transportation.	41.5	23.5	41.5
488410	Motor Vehicle Towing	8.0	7.0	8.0
488490	Other Support Activities for Road Transportation.	8.0	16.0	16.0
488510	Freight Transportation Arrangement	16.5	17.5	17.5
488510	Non-Vessel Owning Common Carriers and Household Goods Forwarders. (Exception).	30.0	30.0	30.0
488991	Packing and Crating	30.0	17.5	30.0
488999	All Other Support Activities for Transportation.	8.0	22.0	22.0
491110	Postal Services	8.0	8.0	8.0
492210	Local Messengers and Local Delivery	30.0	10.5	30.0
493110	General Warehousing and Storage	30.0	25.0	30.0
493120	Refrigerated Warehousing and Storage	30.0	32.0	32.0
493130	Farm Product Warehousing and Storage	30.0	13.5	30.0
493190	Other Warehousing and Storage	30.0	32.0	32.0
511210	Software Publishers	41.5	40.0	41.5
512110	Motion Picture and Video Production	35.0	33.0	35.0
512120	Motion Picture and Video Distribution	34.5	26.0	34.5
512131	Motion Picture Theaters (except Drive-Ins)	41.5	39.5	41.5
512132	Drive-In Motion Picture Theaters	8.0	11.0	11.0
512191	Teleproduction and Other Postproduction Services.	34.5	19.5	34.5
512199	Other Motion Picture and Video Industries	22.0	25.0	25.0
512240	Sound Recording Studios	8.0	9.5	9.5
512290	Other Sound Recording Industries	12.0	20.0	20.0
515111	Radio Networks	35.0	41.5	41.5
515112	Radio Stations	41.5	36.0	41.5
515120	Television Broadcasting	41.5	41.5	41.5
515210	Cable and Other Subscription Programming	41.5	41.5	41.5
517410	Satellite Telecommunications	35.0	38.5	38.5
517919	All Other Telecommunications	35.0	33.0	35.0
518210	Data Processing, Hosting, and Related Services.	35.0	33.0	35.0
519110	News Syndicates	30.0	32.0	32.0
519120	Libraries and Archives	16.5	18.5	18.5
519190	All Other Information Services	30.0	26.5	30.0
522110	Commercial Banking	600 million in assets	750 million in assets	750 million in assets.
522120	Savings Institutions	600 million in assets	750 million in assets	750 million in assets.
522130	Credit Unions	600 million in assets	750 million in assets	750 million in assets.
522190	Other Depository Credit Intermediation	600 million in assets	750 million in assets	750 million in assets.
522210	Credit Card Issuing	600 million in assets	750 million in assets	750 million in assets.
522220	Sales Financing	41.5	38.0	41.5
522291	Consumer Lending	41.5	41.5	41.5
522292	Real Estate Credit	41.5	40.0	41.5
522293	International Trade Financing	41.5	31.0	41.5

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
522294 .....	Secondary Market Financing .....	41.5 .....	41.5 .....	41.5
522298 .....	All Other Nondepository Credit Intermediation.	41.5 .....	35.5 .....	41.5
522310 .....	Mortgage and Nonmortgage Loan Brokers ..	8.0 .....	13.0 .....	13.0
522320 .....	Financial Transactions Processing, Reserve, and Clearinghouse Activities.	41.5 .....	39.5 .....	41.5
522390 .....	Other Activities Related to Credit Intermediation.	22.0 .....	25.0 .....	25.0
523110 .....	Investment Banking and Securities Dealing	41.5 .....	41.0 .....	41.5
523120 .....	Securities Brokerage .....	41.5 .....	37.0 .....	41.5
523130 .....	Commodity Contracts Dealing .....	41.5 .....	32.5 .....	41.5
523140 .....	Commodity Contracts Brokerage .....	41.5 .....	26.5 .....	41.5
523210 .....	Securities and Commodity Exchanges .....	41.5 .....	33.0 .....	41.5
523910 .....	Miscellaneous Intermediation .....	41.5 .....	27.0 .....	41.5
523920 .....	Portfolio Management .....	41.5 .....	35.5 .....	41.5
523930 .....	Investment Advice .....	41.5 .....	27.5 .....	41.5
523991 .....	Trust, Fiduciary, and Custody Activities .....	41.5 .....	41.5 .....	41.5
523999 .....	Miscellaneous Financial Investment Activities.	41.5 .....	41.5 .....	41.5
524113 .....	Direct Life Insurance Carriers .....	41.5 .....	37.5 .....	41.5
524114 .....	Direct Health and Medical Insurance Carriers.	41.5 .....	38.5 .....	41.5
524127 .....	Direct Title Insurance Carriers .....	41.5 .....	41.5 .....	41.5
524128 .....	Other Direct Insurance (except Life, Health, and Medical) Carriers.	41.5 .....	39.0 .....	41.5
524130 .....	Reinsurance Carriers .....	41.5 .....	39.5 .....	41.5
524210 .....	Insurance Agencies and Brokerages .....	8.0 .....	13.0 .....	13.0
524291 .....	Claims Adjusting .....	22.0 .....	18.0 .....	22.0
524292 .....	Third Party Administration of Insurance and Pension Funds.	35.0 .....	40.0 .....	40.0
524298 .....	All Other Insurance Related Activities .....	16.5 .....	27.0 .....	27.0
525110 .....	Pension Funds .....	35.0 .....	32.5 .....	35.0
525120 .....	Health and Welfare Funds .....	35.0 .....	32.5 .....	35.0
525190 .....	Other Insurance Funds .....	35.0 .....	32.5 .....	35.0
525910 .....	Open-End Investment Funds .....	35.0 .....	31.5 .....	35.0
525920 .....	Trusts, Estates, and Agency Accounts .....	35.0 .....	32.5 .....	35.0
525990 .....	Other Financial Vehicles .....	35.0 .....	32.5 .....	35.0
531110* .....	Lessors of Residential Buildings and Dwellings.	30.0 .....	23.5 .....	30.0
531120* .....	Lessors of Nonresidential Buildings (except Miniwarehouses).	30.0 .....	28.0 .....	30.0
531130* .....	Lessors of Miniwarehouses and Self-Storage Units.	30.0 .....	20.5 .....	30.0
531190* .....	Lessors of Other Real Estate Property .....	30.0 .....	16.0 .....	30.0
531210 .....	Offices of Real Estate Agents and Brokers ..	8.0 .....	13.0 .....	13.0
531311 .....	Residential Property Managers .....	8.0 .....	11.0 .....	11.0
531312 .....	Nonresidential Property Managers .....	8.0 .....	17.0 .....	17.0
531320 .....	Offices of Real Estate Appraisers .....	8.0 .....	8.5 .....	8.5
531390 .....	Other Activities Related to Real Estate .....	8.0 .....	17.0 .....	17.0
532111 .....	Passenger Car Rental .....	41.5 .....	41.5 .....	41.5
532112 .....	Passenger Car Leasing .....	41.5 .....	41.0 .....	41.5
532120 .....	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.	41.5 .....	41.5 .....	41.5
532210 .....	Consumer Electronics and Appliances Rental.	41.5 .....	40.5 .....	41.5
532281 .....	Formal Wear and Costume Rental .....	22.0 .....	12.5 .....	22.0
532282 .....	Video Tape and Disc Rental .....	30.0 .....	31.0 .....	31.0
532283 .....	Home Health Equipment Rental .....	35.0 .....	36.0 .....	36.0
532284 .....	Recreational Goods Rental .....	8.0 .....	7.5 .....	8.0
532289 .....	All Other Consumer Goods Rental .....	8.0 .....	11.0 .....	11.0
532310 .....	General Rental Centers .....	8.0 .....	7.5 .....	8.0
532411 .....	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	35.0 .....	40.0 .....	40.0
532412 .....	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing.	35.0 .....	34.0 .....	35.0
532420 .....	Office Machinery and Equipment Rental and Leasing.	35.0 .....	32.5 .....	35.0
532490 .....	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	35.0 .....	30.0 .....	35.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 48–49, 51, 52 AND 53—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
533110 .....	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	41.5 .....	35.0 .....	41.5

NAICS codes 531110, 531120, 531130, and 531190—Leasing of Building Space to the Federal Government by Owners: For Government procurement, a size standard of \$41.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent. See Footnote 9 to the SBA’s Table of Size Standards.

Table 3, Summary of Adopted Size Standards Revisions by Sector, below, summarizes the adopted changes to size standards by NAICS sector.

TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
48–49 .....	Transportation and Warehousing .....	43	18	0	25
51 .....	Information .....	19	8	0	11
52 * .....	Finance and Insurance .....	39	10	0	29
53 .....	Real Estate and Rental and Leasing .....	25	9	0	16
All Sectors .....	.....	126	45	0	81

**Evaluation of Dominance in Field of Operation**

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.4%, varying from 0.005% to 4.8%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

**Alternatives Considered**

In response to the unprecedented economic impacts of the ongoing COVID–19 pandemic on small businesses and Government response, SBA is adopting increases to size standards where the data suggests increases are warranted, and retaining all current size standards where the data suggested lowering of size standards is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 45 industries, decreasing them for 69 industries, and retaining them at their

current levels for 12 industries. Alternative Option Two was to retain all current size standards.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID–19 pandemic. Considering the impacts of the Great Recession and Government actions that followed to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID–19 pandemic, SBA considered retaining the current level of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because the results discussed in the Regulatory Impact Analysis section,

below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 45 and retaining 81 size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA’s loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

**Compliance With Executive Orders 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A statement of the need for the regulatory action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

### Regulatory Impact Analysis

#### 1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small.

Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in the Federal marketplace.

The revisions to the existing size standards for 45 industries in NAICS Sectors 48–49, 51, 52, and 53 are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal

small business programs that are designed to assist them to become competitive and create jobs.

#### 2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

#### Changes to Size Standards

Based on the results from the analyses of the latest industry and Federal contracting data, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small firms and the overall economy, of the total of 126 industries in Sectors 48–49, 51, 52, and 53 that have receipt-based size standards, SBA is adopting increases to size standards for 45 industries and maintaining current size standards for the remaining 81 industries.

#### The Baseline

For purposes of this regulatory action, the baseline represents maintaining the "status quo," *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels of small business benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available when the proposed rule was prepared), of a total of about 700,544 firms in industries in Sectors 48–49, 51, 52 (except assets-based size standards), and 53 for which SBA evaluated their receipt-based size standards, 97.2% are considered small under the current size standards. That percentage varies from 95.8% in Sector 51 to 97.9% in Sector 53. Based on the data from Federal Deposit Insurance Corporation (FDIC) and National Credit

Union Administration (NCUA), from a total of about 5,415 depository institutions 77.3% are small and from a total of 5,492 credit unions, 91.2% are small under the current asset-based size standards. Based on the data from FPDS–NG for fiscal years 2018–2020, about 11,939 unique firms in those industries with receipt-based size standards, received at least one Federal contract during that period, of which 73.5% were small under the current size standards. For these sectors, of \$20.3 billion in total average annual contract dollars awarded to businesses during that period, 21.4% went to small businesses. From the total small business contract dollars awarded during the period considered, 43.8% were awarded through various set-aside programs and 56.2% were awarded through non-set aside contracts. Based on the FDIC data, of a total of \$18,034 billion in assets, 4.6% are owned by small depository institutions. With respect to Credit Unions, from a total of \$1,471 billion in assets, 25.7% are owned by small credit unions.

Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 6,570 7(a) and 504 loans in that period, totaling about \$2.7 billion, of which 83% was issued through the 7(a) program and 17% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 749 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about \$19.2 million on an annual basis.<sup>2</sup> Table 4, Baseline for All Industries, provides these baseline results by NAICS sector.

#### Increases to Size Standards

As stated above, of 126 receipts-based size standards in NAICS Sectors 48–49, 51, 52, and 53 reviewed, based on the results from analyses of latest industry

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

and Federal market data, impacts of size standards changes on small businesses, and considerations of the impacts of the COVID-19 pandemic and public comments to the proposed rule, SBA is adopting increases to size standards for 45 industries and maintaining size standards for 79 industries and two

subindustries (exceptions). Below are descriptions of the benefits, costs, and transfer impacts of the increases to size standards adopted in this final rule.

The results of regulatory impact analyses SBA provided in the October 2020 proposed rule were based on the FPDS-NG and SBA loan data for fiscal years 2016-2018. In this final rule, SBA

is updating the impact analysis results by using the FPDS-NG and SBA loan data for fiscal years 2018-2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

TABLE 4—BASELINE FOR ALL INDUSTRIES

	Sector 48-49	Sector 51	Sector 52	Sector 53	Total
Baseline All Industries (current size standards)	43	19	39	25	126
Total firms (2012 Economic Census)	162,147	45,821	220,860	271,716	700,544
Total small firms under current size standards (2012 Economic Census)	156,173	43,915	214,790	265,977	680,855
Small firms as % of total firms	96.3%	95.8%	97.3%	97.9%	97.2%
Total contract dollars (\$ million) (FPDS-NG FY2018-2020)	\$8,205	\$8,103	\$3,012	\$986	\$20,306
Total small business contract dollars under current standards (\$ million) (FPDS-NG FY2020-2018)	\$1,492	\$1,926	\$410	\$520	\$4,348
Small business dollars as % of total dollars (FPDS-NG FY2018-2020)	18.2%	23.8%	13.6%	52.7%	21.4%
Total no. of unique firms getting contracts (FPDS-NG FY2018-2020)	3,378	5,119	500	3,351	11,939
Total no. of unique small firms getting small business contracts (FPDS-NG FY2018-2020)	2,558	3,555	258	2,591	8,777
Small business firms as % of total firms	75.7%	69.4%	51.6%	77.3%	73.5%
No. of 7(a) and 504/CDC loans (FY 2018-2020)	3,406	402	1,165	1,597	6,570
Amount of 7(a) and 504 loans (\$ million) (FY 2018-2020)	\$933	\$190	\$547	\$1,079	\$2,749
No. of EIDL loans (FY 2018-2020) *	87	19	45	598	749
Amount of EIDL loans (\$ million) (FY 2018-2020) *	\$3.9	\$0.5	\$1.6	\$13.2	\$19.2
Total Number of Depository Institutions (FDIC, SDI) (2018)			5,415		
Number of Small Depository Institutions (FDIC, SDI) (2018)			4,188		
Small firms as % of total Depository Institutions (2018)			77.3%		
Total Assets of Depository Institutions (\$ million) (FDIC, SDI) (2018)			\$18,034,372		
Total Assets of Small Depository Institutions (\$ million) (FDIC, SDI) (2018)			\$837,836		
SB Assets as % of Total Assets			4.6%		
Total Number of Credit Unions (NCUA) (2018)			5,492		
Number of small Credit Unions (NCUA) (2018)			5,010		
Small firms as % of total Depository Institutions			91.2%		
Total Assets of Credit Unions (\$ million) (NCUA) (2018)			\$1,470,839		
Total Assets of Small Credit Unions (\$ million) (NCUA) (2018)			\$377,619		
SB Assets as % of Total Assets of Credit Unions			25.7%		

\* Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Benefits of Increasing Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining eligibility for a longer period. These include SBA's business loan programs, Economic Injury Disaster Loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/

Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are

available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 45 industries in NAICS Sectors 48-49, 51, 52, and 53 for which it is increasing size standards, about 1,790 firms not small under the current size standards, will become small under the adopted size standards increases and therefore become eligible for these programs. That represents about 0.6% of all firms classified as small under the current



size standards in industries for which SBA is adopting increases to size standards. When adopted, SBA’s size standards would result in an increase to the small business share of total receipts in those industries from 29.9% to 32.7%. Table 5, Impacts of Increasing Size Standards, provides impacts of increasing 45 industries by NAICS sector.

With more businesses qualifying as small under the adopted increases to size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards

will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

As shown in Table 5, based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 53 firms that are active in Federal contracting in those industries would gain small business status under the adopted size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the increases to 45 size standards could receive Federal small business contracts totaling about \$20 million annually. That represents a

2.3% increase to small business dollars from the baseline.

Based on the FDIC data for fiscal year 2018, SBA estimates that about 200 depository institutions would gain small institution status under the adopted increases to asset-based size standards with an additional \$132 billion or 15.8% increase in small depository institutions’ assets. Also, based on the NCUA data for fiscal year 2018, SBA estimates that about 85 credit unions would gain small business status under the adopted increases to size standards, with an additional \$56 billion in assets or 14.9% increase for small credit unions (see Table 5).

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
No. of industries with increases to size standards .....	18	8	10	9	45
Total current small businesses in industries with increases to size standards (2012 Economic Census) ..	27,255	5,368	135,774	150,404	318,800
Additional firms qualifying as small under standards (2012 Economic Census) .....	184	13	623	970	1,790
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	0.7%	0.2%	0.5%	0.6%	0.6%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG FY2018–2020) <sup>1</sup> .....	419	267	93	1173	1,943
Additional small business firms getting small business status (FPDS–NG FY2018–2020) <sup>1</sup> .....	23	4	5	22	53
% increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG FY2018–2020) .....	5.5%	1.5%	5.4%	1.9%	2.7%
Total small business contract dollars under current standards in industries with increases to size standards (\$ million) (FPDS–NG FY2018–2020) .....	\$331.4	\$132.1	\$178.3	\$245.6	\$887.3
Estimated additional small business dollars available to newly-qualified small firms (using avg. dollars obligated to small businesses) (\$ million) (FPDS–NG FY 2018–2020) <sup>2</sup> .....	\$5.9	\$2.1	\$3.5	\$8.7	\$20.3
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards .....	1.8%	1.6%	2.0%	3.6%	2.3%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018–2020) .....	360	49	761	703	1,873
Total 7(a) and 504 loan amounts to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020) .....	\$150.6	\$21.7	\$301.5	\$249.8	\$723.6
Estimated no. of 7(a) and 504 loans to newly-qualified small firms .....	4	1	4	5	14
Estimated 7(a) and 504 loan amounts to newly-qualified small firms (\$ million) .....	\$2.5	\$0.4	\$1.6	\$1.8	\$6.3
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	0.3%	0.2%	0.3%	0.2%	0.2%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018–2020) <sup>3</sup> .....	59	8	0	98	165
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY 2018–2020) <sup>3</sup> .....	\$2.7	\$0.2	\$1.5	\$4.3	\$8.6
Estimated no. of EIDL loans to newly-qualified small firms <sup>3</sup> .....	2	1	1	1	5
Estimated EIDL loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	\$0.05	\$0.02	\$0.04	\$0.04	\$0.2

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with increases to size standards <sup>3</sup> .....	2.0%	12.5%	2.4%	1.0%	1.8%
Total current small businesses in industries with increases to size standards (FDIC) (2018) .....			4,188		
Additional firms qualifying as small under adopted standards (FDIC) .....			198		
% Increase small institutions with increases to size standards .....			4.7%		
Total Assets of Small Depository Institutions (\$ million) (FDIC, SDI) (2018) .....			\$837,836		
Estimated increase in total assets of Small Depository Institutions (\$ million) .....			\$132,440		
% increase in total assets of small depository institutions .....			15.8%		
Number of small Credit Unions (NCUA) (2018) .....			5,010		
Additional small Credit Unions (NCUA) .....			84		
% Increase small institutions with increases to size standards .....			1.7%		
Total Assets of Small Credit Unions (\$ million) (NCUA) (2018) .....			\$377,619		
Estimated increase in total assets of Small Credit Unions (\$ million) .....			\$56,327		
% increase in total assets of small Credit Unions .....			14.9%		

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

The added competition from more businesses qualifying as small can result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the adopted increases to size standards, HUBZone firms might receive more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 14 SBA 7(a) and 504 loans totaling about \$6.3 million could be made to these newly-qualified small businesses in those industries under the

adopted size standards. That represents a 0.2% increase to the loan amount compared to the group baseline (see Table 5).

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Because the benefits provided through this program are contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the disaster loan program data, SBA estimates that, on an annual basis, the newly-defined small businesses under the increases to 45 size standards could receive 5 disaster loans (except physical disaster loans), totaling about \$0.2 million. Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

**Costs Increasing Size Standards**

Aside from taking time to register in *sam.gov* to be eligible to participate in Federal contracting, and update the System for Award Management (SAM) profile annually, small businesses incur no direct costs to gain or retain their small business status as a result of increases to size standards. All

businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. This final rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly-qualified small businesses could become active in Federal procurement, the adopted increases to size standards, if adopted, may entail some additional administrative costs to the Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé program. With an expanded pool of small businesses, it is likely that

Federal agencies would set-aside more contracts for small businesses under the adopted increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number of size protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards.

Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013), as compared to about 500 during fiscal years 2018–2020 when size standard increases were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the adopted increases to size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the adopted size standards. However, the additional costs associated with fewer bidders are expected to be minor because, by law, procurements may be set aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the adopted increases to size standards,

HUBZone firms might receive fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

#### Transfer Impacts of Increasing Size Standards

The increases to 45 size standards that are adopted in this final rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the adopted increases to size standards, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set-aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the adopted increases to size standards. This impact may be offset by a greater number of procurements being set-aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

#### 3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 45 industries for which the analytical results, as presented in Table 4 of the October 2020 proposed rule, suggest

raising them would be raised. However, the size standards of 69 industries for which the analytical results suggest lowering them would be lowered. For the 12 remaining industries, size standards would be maintained at their current levels based on the results. Alternative Option Two would propose retaining size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses benefits, costs, and the net impacts of each option.

#### Alternative Option One: Adopting All Calculated Size Standards

As discussed previously in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA's procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability in SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set-aside opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the "Size Standards Methodology" white paper, in addition to adopting all results of the primary

analysis, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We have discussed already the benefits, costs, and transfer impacts of increasing 45 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 69 size standards based on the analytical results.

**Benefits of Decreasing Size Standards Under Alternative Option One**

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide

targeted, set-aside opportunities for small businesses under SBA's business development programs, such as small business, SDB, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of calculated size standards diminishes the risk of awarding contracts to firms that are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of awarding set-aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also diminish the risks of providing SBA's loans to firms that do not need them the most. This may provide a better chance for smaller small firms to grow and benefit from the opportunities available on the Federal marketplace, and strengthen the small business industrial base for the Federal Government.

**Costs of Decreasing Size Standards Under Alternative Option One**

Table 6, Impacts of Decreasing Size Standards Under Alternative Option

One, below, shows the various impacts of lowering size standards in 69 industries based solely on the analytical results. Based on the 2012 Economic Census, about 5,500 (0.9%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS-NG data for fiscal years 2018-2020, nearly 500 (5.0%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, during fiscal years 2018-2020, agencies awarded, on an annual basis, about \$3,338 million in small business contracts in those 69 industries for which SBA considered decreasing size standards under Alternative Option One. Lowering size standards in 69 industries would reduce Federal contract dollars awarded to small businesses by \$87 million or about 2.6% relative to the baseline level.

**TABLE 6—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE**

	Sector 48-49	Sector 51	Sector 52	Sector 53	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	23	9	24	13	69
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	133,032	39,030	76,036	114,495	510,777
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	1,086	72	246	234	1,738
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards .....	0.50%	0.19%	0.34%	0.21%	0.92%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) <sup>1</sup>	2,188	3,200	131	1,339	6,744
Estimated number of small business firms that would have lost small business status for Federal contracting in the decreases that SBA considered <sup>1</sup> .....	110	17	5	28	155
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) .....	5.0%	0.5%	0.0%	2.1%	2.3%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS-NG FY2018-2020) .....	\$1,157	\$1,776	\$145	\$260	\$3,338
Estimated small business dollars not available to firms that would have lost business status (Using avg dollars obligated to SBs) (\$ million) <sup>2</sup> (FPDS-NG FY 2018-2020) .....	\$64.7	\$11.2	\$4.0	\$6.8	\$86.6
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing to size standards .....	5.6%	0.6%	0.0%	2.6%	2.6%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018-2020) .....	3,046	346	372	846	4,610

TABLE 6—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) .....	\$782	\$165	\$232	\$807	\$1,986
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	5	1	1	1	8
Estimated 7(a) and 504 loan amounts not available to firms that would have small status (\$ million) .....	\$1.6	\$0.5	\$0.6	\$1.0	\$3.6
% decrease to 7(a) and 504 loan amounts relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	0.2%	0.3%	0.1%	0.1%	0.3%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) <sup>3</sup> .....	110	19	22	868	1,019
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) <sup>3</sup> .....	\$4.6	\$1.0	\$0.8	\$11.6	\$18.0
Estimated no. of EIDL loans not available to firms that would have lost small business status <sup>3</sup> .....	2	1	1	1	5
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) <sup>3</sup> .....	\$0.08	\$0.05	\$0.04	\$0.01	\$0.18
% decrease to EIDL loan amount relative to the baseline <sup>3</sup> .....	2.0%	10.7%	2.4%	0.1%	1.4%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Because of the importance of these sectors for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact under the assumptions of Alternative Option One. SBA could adopt one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results, (2) Decrease size standards by a smaller amount than the calculated threshold, and (3) Retain the size standards at their current levels.

Nevertheless, because Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity is likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set-aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 6, decreasing size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about 8 of SBA's 7(a) and 504 loans with total amounts of \$3.6 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 0.3% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted by way of access to loans through SBA's EIDL loan program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. For example, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about 5 EIDL loans with total amounts of \$0.2 million could not be made to those small businesses that would lose

eligibility under the reduced size standards (before mitigation). That represents about 1.4% decrease of the loan amounts compared to the baseline. Because this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a more meaningful estimate of this impact.

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

Transfer Impacts of Decreasing Size Standards Under Alternative Option One

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the adopted

increases to size standards, it would have no impact on the overall economic activity because the total Federal contract dollars available for businesses to compete for will stay the same. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses

under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts of the increasing size standards (see Table 5). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted ones to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 5. Table 6

and Table 7, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option One, respectively.

Based on the 2012 Economic Census, SBA estimates that in 114 industries in NAICS Sectors 48–49, 51, 52 and 53 for which the analytical results suggested to change size standards, about 50 firms (see Table 7), would become small under Alternative Option One. That represents about 0.01% of all firms classified as small under the current size standards in those industries. That is about 1,740 fewer firms qualifying as small under Alternative Option One, which represents a 97.0% reduction from about 1,790 firms that would qualify as small (see Table 5) under the proposal being adopted in this final rule (*i.e.*, increasing 45 and retaining 81 size standards).

TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
No. of industries with changes to size standards .....	41	17	34	22	114
Total no. of small business under the current size standards (2012 Economic Census) .....	156,173	42,803.4	208,456	265,559	669,991
Additional firms qualifying as small under size standards (2012 Economic Census) .....	–1,002	–60	377	736	52
% of additional firms qualifying as small relative to total current small businesses .....	–0.6%	–0.1%	0.2%	0.3%	0.01%
No. of current unique small firms getting small business contracts (FPDS–NG FY2018–2020) <sup>1</sup> .....	2,538	3428	218	2,481	8,504
Additional small firms getting small business status (FPDS–NG FY2018–2020) <sup>1</sup> .....	–88	–14	0	–7	–109
% increase to small firms relative to current unique small firms getting small business contracts (FPDS–NG FY2018–2020) .....	–3.5%	–0.4%	0.0%	–0.3%	–1.3%
Total small business contract dollars under current size standards (\$ million) (FPDS–NG FY2018–2020) .....	\$1,488	\$1,908	\$324	\$505	\$4,225
Estimated small business dollars available to newly-qualified small firms (\$ million) (FPDS–NG FY 2018–2020) <sup>2</sup> .....	–\$59	–\$9	–\$0.5	–\$2	–\$66
% increase to dollars relative to total small business contract dollars under current size standards .....	–3.9%	–0.5%	–0.1%	0.4%	–1.6%
Total no. of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	3,406	402	1,165	1,597	6,570
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020) .....	\$933	\$190	\$547	\$1,079	\$2,749
Estimated no. of additional 7(a) and 504 loans to newly-qualified small firms .....	–1	0	3	4	6
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms (\$ million) .....	\$0.9	\$0.0	\$1.0	\$0.8	\$2.6
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	0.1%	0.0%	0.18%	0.08%	0.08%
Total no. of EIDL loans to small businesses (FY 2018–2020) <sup>3</sup> .....	87	19	45	598	749
Total amount of EIDL loans to small businesses (FY 2018–2020) <sup>3</sup> .....	\$3.9	\$0.5	\$1.6	\$13.2	\$19.2
Estimated no. of additional EIDL loans to newly-qualified small firms <sup>3</sup> .....	0	0	0	0	0
Estimated additional EIDL loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	–\$0.02	–\$0.03	\$0.01	\$0.03	–\$0.03
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses <sup>3</sup> .....	–0.6%	–5.9%	–0.1%	0.2%	–0.1%

TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 48–49	Sector 51	Sector 52	Sector 53	Total
Total current small businesses in industries with proposed increases to size standards (FDIC) (2018) .....			4,188		
Additional firms qualifying as small under adopted standards (FDIC) .....			198		
% increase small institutions with increases to size standards .....			4.7%		
Total Assets of Small Depository Institutions (FDIC, SDI) (2018) .....			\$837,836		
Estimated increase in total assets of Small Depository Institutions .....			\$132,440		
% increase in total assets of small depository institutions .....			15.8%		
Number of small Credit Unions (NCUA) (2018) .....			5,010		
Additional small Credit Unions (NCUA) .....			84		
% increase small institutions with increases to size standards .....			1.7%		
Total Assets of Small Credit Unions (NCUA) (2018) .....			\$377,619		
Estimated increase in total assets of Small Credit Unions .....			\$56,327		
% increase in total assets of small Credit Unions .....			14.9%		

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As shown in Table 7, based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that, in aggregate, about 109 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from Sector 48–49. This represents a decrease of about 1.3% of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about \$660 million of Federal procurement dollars would not be available to firms losing their small status. That is a decrease of 1.6% from the baseline. A large portion of these losses is accounted for by Sector 48–49.

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans will increase by six loans, while the total loan amount will increase by about \$2.6 million. This is a 0.08% rise of the loan amounts relative to the baseline. Firms' participation under the SBA's EIDL loan program will be affected as well. Because the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL loan program data, SBA estimates that there will be no change to the total number of EIDL loans, while the total loan amount will be reduced by about \$.03 million. This represents a

0.1% decrease of the loan amounts relative to the baseline. Table 7 provides these results by NAICS sector.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.*, zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.*, access to set-aside contracts and capital) that become available to them under the option of increasing 45 and retaining 81 size standards adopted in this final rule. Moreover, retaining all size standards under this option would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Final Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and disaster loan programs,

and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many of the industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2012 Economic Census, SBA estimates that there are about 319,000 small firms covered by this rulemaking under industries with changes to size standards. Under this final rule, SBA estimates that an additional 1,790 businesses will be defined as small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–

28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8).). Therefore, businesses opting to participate in those programs must comply with SAM requirements. Changes in small business size standards do not result in additional costs associated with SAM registration or certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal Rules that may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 45 and maintaining 81 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 45

industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 69 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 48–49 (see Table 6). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 45 and decreasing 69 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 45 and retaining 35 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

#### *Executive Order 13563*

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a



number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in early 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled “Size Standards Methodology” and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review. The “Size Standards Methodology” white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this final rule. SBA received a total of four comments to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table “Small Business Size Standards by NAICS Industry” as follows:

- a. Revise the entries for “481219”, “484122”, “485111” through “485113”, “485119”, “485210”, “485410”, “486210”, “487110”, “487210”, “487990”, “488210”, “488490”, “488510”, “488510 (Exception)”, “488999”, “493120”, “493190”, “512132”, “512199”, “512240”, “512290”, “515111”, “517410”, “519110”, “519120”, “522110”, “522120”, “522130”, “522190”, “522210”, “522310”, “522390”, “524210”, “524292”, “524298”, “531210”, “531311”, “531312”, “531320”, “531390”, “532282”, “532283”, “532289”, and “532411”, and
- b. Revise footnote 10.

The revisions read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *	<b>Sectors 48–49—Transportation and Warehousing</b>		
	<b>Subsector 481—Air Transportation</b>		
481219	Other Nonscheduled Air Transportation	\$22.0	
* * * * *	<b>Subsector 484—Truck Transportation</b>		
484122	General Freight Trucking, Long-Distance, Less Than Truckload	38.0	
* * * * *	<b>Subsector 485—Transit and Ground Passenger Transportation</b>		
485111	Mixed Mode Transit Systems	25.5	
485112	Commuter Rail Systems	41.5	
485113	Bus and Other Motor Vehicle Transit Systems	28.5	
485119	Other Urban Transit Systems	33.0	
485210	Interurban and Rural Bus Transportation	28.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
485410	School and Employee Bus Transportation	26.5	
* * * * *		*	*
<b>Subsector 486—Pipeline Transportation</b>			
* * * * *		*	*
486210	Pipeline Transportation of Natural Gas	36.5	
* * * * *		*	*
<b>Subsector 487—Scenic and Sightseeing Transportation</b>			
487110	Scenic and Sightseeing Transportation, Land	18.0	
487210	Scenic and Sightseeing Transportation, Water	12.5	
487990	Scenic and Sightseeing Transportation, Other	22.0	
<b>Subsector 488—Support Activities for Transportation</b>			
* * * * *		*	*
488210	Support Activities for Rail Transportation	30.0	
* * * * *		*	*
488490	Other Support Activities for Road Transportation	16.0	
488510	Freight Transportation Arrangement <sup>10</sup>	<sup>10</sup> 17.5	
488510 (Exception)	Non-Vessel Owning Common Carriers and Household Goods Forwarders	30.0	
* * * * *		*	*
488999	All Other Support Activities for Transportation	22.0	
* * * * *		*	*
<b>Subsector 493—Warehousing and Storage</b>			
* * * * *		*	*
493120	Refrigerated Warehousing and Storage	32.0	
* * * * *		*	*
493190	Other Warehousing and Storage	32.0	
<b>Sector 51—Information</b>			
* * * * *		*	*
<b>Subsector 512—Motion Picture and Sound Recording Industries</b>			
* * * * *		*	*
512132	Drive-In Motion Picture Theaters	11.0	
* * * * *		*	*
512199	Other Motion Picture and Video Industries	25.0	
* * * * *		*	*
512240	Sound Recording Studios	9.5	
* * * * *		*	*
512290	Other Sound Recording Industries	20.0	
<b>Subsector 515—Broadcasting (except Internet)</b>			
515111	Radio Networks	41.5	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
<b>Subsector 517—Telecommunications</b>			
517410	Satellite Telecommunications	38.5	
*	*	*	*
<b>Subsector 519—Other Information Services</b>			
519110	News Syndicates	32.0	
519120	Libraries and Archives	18.5	
*	*	*	*
<b>Sector 52—Finance and Insurance</b>			
<b>Subsector 522—Credit Intermediation and Related Activities</b>			
522110	Commercial Banking <sup>8</sup>	750 million in assets <sup>8</sup> .	
522120	Savings Institutions <sup>8</sup>	750 million in assets <sup>8</sup> .	
522130	Credit Unions <sup>8</sup>	750 million in assets <sup>8</sup> .	
522190	Other Depository Credit Intermediation <sup>8</sup>	750 million in assets <sup>8</sup> .	
522210	Credit Card Issuing <sup>8</sup>	750 million in assets <sup>8</sup> .	
*	*	*	*
522310	Mortgage and Nonmortgage Loan Brokers	13.0	
*	*	*	*
522390	Other Activities Related to Credit Intermediation	25.0	
*	*	*	*
<b>Subsector 524—Insurance Carriers and Related Activities</b>			
524210	Insurance Agencies and Brokerages	13.0	
*	*	*	*
524292	Third Party Administration of Insurance and Pension Funds	40.0	
524298	All Other Insurance Related Activities	27.0	
*	*	*	*
<b>Sector 53—Real Estate and Rental and Leasing</b>			
<b>Subsector 531—Real Estate</b>			
531210	Offices of Real Estate Agents and Brokers <sup>10</sup>	<sup>10</sup> 13.0	
531311	Residential Property Managers	11.0	
531312	Nonresidential Property Managers	17.0	
531320	Offices of Real Estate Appraisers	8.5	
531390	Other Activities Related to Real Estate	17.0	
<b>Subsector 532—Rental and Leasing Services</b>			
532282	Video Tape and Disc Rental	31.0	
532283	Home Health Equipment Rental	36.0	
*	*	*	*
532289	All Other Consumer Goods Rental	11.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	40.0	

Footnotes

<sup>8</sup> NAICS Codes 522110, 522120, 522130, 522190, and 522210—A financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. “Assets” for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS Codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

<sup>10</sup> NAICS codes 488510 (excluding the exception), 531210, 541810, 561510, 561520 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

Isabella Casillas Guzman,  
Administrator.

[FR Doc. 2022–06609 Filed 3–30–22; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG88

Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; and Other Services. Specifically, SBA is increasing the size standards for 70 industries in those sectors, including 14 industries in NAICS Sector 61 (Education Services), 18 industries in Sector 62 (Health Care and Social Assistance), 11 industries in Sector 71 (Arts, Entertainment and Recreation), four industries in Sector 72 (Accommodation and Food Services), and 23 industries in Sector 81 (Other Services).

**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205–6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion of Size Standards**

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions.

SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards under the Jobs Act, SBA reviewed all receipt-based size standards in NAICS Sectors 61, 62, 71, 72, and 81 to determine whether the existing size standards should be retained or revised based on the current

<sup>1</sup> On December 21, 2021, the U. S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . .” In the near future, SBA will issue a proposed rule to adopt the OMB’s NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

industry and Federal market data. After its review, SBA published in the November 27, 2020, issue of the **Federal Register** (85 FR 76390) a proposed rule to increase the size standards for 14 industries in NAICS Sector 61 (Education Services), 18 industries in Sector 62 (Health Care and Social Assistance), 11 industries in Sector 71 (Arts, Entertainment and Recreation), four industries in Sector 72 (Accommodation and Food Services), and 23 industries in Sector 81 (Other Services). In this final rule, SBA is adopting the proposed size standards from the November 2020 proposed rule without change.

In conjunction with the current comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the

proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s Size Standard Methodology is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each receipt-based industry in NAICS Sectors 61, 62, 71, 72, and 81, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 Economic Census special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various

receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association’s (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2016–2018. Table 4 of the November 2020 proposed rule, Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 144 industries and one subindustry (exception) reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors from Table 4 of the proposed rule supported increasing size standards for 70 industries, decreasing size standards for 63 industries, and retaining size standards for 12 industries. Table 1, Summary of Calculated Size Standards, below, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards unchanged
61 .....	Education Services .....	18	14	4	0
62 .....	Health Care and Social Assistance .....	39	18	18	3
71 .....	Arts, Entertainment and Recreation .....	25	11	11	3
72 .....	Accommodation and Food Services .....	15	4	9	2
81 .....	Other Services .....	48	23	21	4
All Sectors ....	.....	145	70	63	12

In the November 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size

standards. To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA’s loan programs, SBA analyzed FPDS–NG data for fiscal years 2018–2020 and internal data on its guaranteed loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In the proposed rule, SBA sought comments on its proposal to increase size standards for 70 industries and retain the current size standards for the

remaining 75 industries or subindustries in Sectors 61, 62, 71, 72, and 81. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule; whether the decision not to lower any size standards is justified by the COVID–19 pandemic; whether the equal weighting of individual factors to derive an industry size standard is appropriate; and

whether the data sources used were appropriate or sufficient.

**Discussion of Comments**

SBA received a total of 12 comments on the proposed rule, only three of which were related to size standards; the other nine comments were mostly concerned with impacts from the COVID-19 pandemic and getting qualified for government relief, including the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) Programs, which is beyond the scope of the proposed rule. The comments to the proposed rule are available at [www.regulations.gov](http://www.regulations.gov) (RIN 3245-AG88) and are summarized and discussed below.

**Comments on Proposed Changes to Size Standards**

Of the three comments that pertained to size standards, one expressed general support of the proposed size standards increases in the proposed rule, arguing that extending the circle of small businesses will help medium-small businesses that have just exceeded size standards regain small business status and will allow small businesses to grow and still be able to qualify as a small business, which will have a positive effect on the U.S. economy. The second comment supported the SBA’s proposed increase to the size standard for NAICS 624410 (Child Day Care Services) from \$8 million to \$8.5 million. The commenter stated that the proposed change supports childcare and

preschool services, which are severely impacted by the COVID-19 pandemic, as the change will enable them to obtain financial support to survive.

The third comment was from an industry association representing amusement or theme parks, water parks, attractions, family entertainment centers, arcades, ariel adventure courses, zoos, aquariums, museums, science centers, and resorts categories, which fall under NAICS 713110 (Amusement and Theme Parks) with the current size standard of \$41.5 million, which happens to be the highest of any receipts-based size standards. Citing increasing operating costs and increased investments to comply with the COVID-19 pandemic requirements, the commenter urged SBA to increase the size standard for NAICS 713110. Specifically, the association urged SBA to either consider changing the measure of SBA size eligibility for NAICS 713110 from receipts to net income or to substantially increase its receipts-based size standard.

*SBA Response*

SBA rejects the association’s suggestion for the following reasons. First, section 3(a)(2)(C)(ii)(II) of the Small Business Act provides that the size of a business concern providing services (such as those in NAICS 713110) must be determined based on the annual average gross receipts. Accordingly, SBA rejects net income as a measure of size for NAICS 713110. Second, in accordance with its “Size

Standards Methodology” SBA caps the highest receipts-based size standard at \$41.5 million, above which no business concern could be classified as small. Because NAICS 713110 already has the highest possible \$41.5 million receipts-based size standard, SBA cannot increase the size standard for that NAICS code beyond \$41.5 million. SBA agrees with a comment that expressed general support to the proposed rule and another comment that supported the SBA proposed increase to the size standard for NAICS 624410.

**Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the proposed rule and on its analyses of industry and Federal contracting factors using the latest available data when the proposed rule was prepared, and given the expressed support for SBA’s proposed increases and the absence of any significant adverse comments opposing the increase, SBA is adopting the size standards as proposed in the November 2020 proposed rule. Thus, SBA is increasing the size standards for 14 industries in NAICS Sector 61, 18 industries in Sector 62, 11 industries in Sector 71, four industries in Sector 72, and 23 industries in Sector 81. A summary of SBA’s size standards revisions in this rule can be found in Table 2, Summary of Size Standards Revisions in NAICS Sectors 61, 62, 71, 72, and 81.

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 61, 62, 71, 72 AND 81

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
611110	Elementary and Secondary Schools	\$12.0	\$17.5	\$17.5
611210	Junior Colleges	22.0	28.5	28.5
611310	Colleges, Universities, and Professional Schools	30.0	30.5	30.5
611410	Business and Secretarial Schools	8.0	18.0	18.0
611420	Computer Training	12.0	14.0	14.0
611430	Professional and Management Development Training	12.0	13.0	13.0
611511	Cosmetology and Barber Schools	8.0	11.5	11.5
611512	Flight Training	30.0	28.0	30.0
611513	Apprenticeship Training	8.0	10.0	10.0
611519	Other Technical and Trade Schools	16.5	18.5	18.5
611519 (Exception)	Job Corps Centers	41.5	37.0	41.5
611610	Fine Arts Schools	8.0	7.0	8.0
611620	Sports and Recreation Instruction	8.0	7.0	8.0
611630	Language Schools	12.0	18.0	18.0
611691	Exam Preparation and Tutoring	8.0	11.0	11.0
611692	Automobile Driving Schools	8.0	9.0	9.0
611699	All Other Miscellaneous Schools and Instruction	12.0	14.5	14.5
611710	Educational Support Services	16.5	21.0	21.0
621111	Offices of Physicians (except Mental Health Specialists)	12.0	14.0	14.0
621112	Offices of Physicians, Mental Health Specialists	12.0	8.0	12.0
621210	Offices of Dentists	8.0	7.5	8.0
621310	Offices of Chiropractors	8.0	6.5	8.0
621320	Offices of Optometrists	8.0	6.5	8.0
621330	Offices of Mental Health Practitioners (except Physicians)	8.0	7.0	8.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 61, 62, 71, 72 AND 81—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists.	8.0	11.0	11.0
621391	Offices of Podiatrists	8.0	6.5	8.0
621399	Offices of All Other Miscellaneous Health Practitioners	8.0	9.0	9.0
621410	Family Planning Centers	12.0	16.5	16.5
621420	Outpatient Mental Health and Substance Abuse Centers	16.5	14.0	16.5
621491	HMO Medical Centers	35.0	39.0	39.0
621492	Kidney Dialysis Centers	41.5	41.5	41.5
621493	Freestanding Ambulatory Surgical and Emergency Centers	16.5	15.5	16.5
621498	All Other Outpatient Care Centers	22.0	22.5	22.5
621511	Medical Laboratories	35.0	36.5	36.5
621512	Diagnostic Imaging Centers	16.5	15.0	16.5
621610	Home Health Care Services	16.5	16.5	16.5
621910	Ambulance Services	16.5	20.0	20.0
621991	Blood and Organ Banks	35.0	34.5	35.0
621999	All Other Miscellaneous Ambulatory Health Care Services	16.5	18.0	18.0
622110	General Medical and Surgical Hospitals	41.5	30.0	41.5
622210	Psychiatric and Substance Abuse Hospitals	41.5	23.5	41.5
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	41.5	30.0	41.5
623110	Nursing Care Facilities (Skilled Nursing Facilities)	30.0	25.0	30.0
623210	Residential Intellectual and Developmental Disability Facilities	16.5	15.5	16.5
623220	Residential Mental Health and Substance Abuse Facilities	16.5	15.0	16.5
623311	Continuing Care Retirement Communities	30.0	22.5	30.0
623312	Assisted Living Facilities for the Elderly	12.0	20.5	20.5
623990	Other Residential Care Facilities	12.0	14.0	14.0
624110	Child and Youth Services	12.0	13.5	13.5
624120	Services for the Elderly and Persons with Disabilities	12.0	13.0	13.0
624190	Other Individual and Family Services	12.0	14.0	14.0
624210	Community Food Services	12.0	17.0	17.0
624221	Temporary Shelters	12.0	11.5	12.0
624229	Other Community Housing Services	16.5	16.5	16.5
624230	Emergency and Other Relief Services	35.0	36.5	36.5
624310	Vocational Rehabilitation Services	12.0	13.0	13.0
624410	Child Day Care Services	8.0	8.5	8.5
711110	Theater Companies and Dinner Theaters	22.0	20.0	22.0
711120	Dance Companies	12.0	16.0	16.0
711130	Musical Groups and Artists	12.0	13.0	13.0
711190	Other Performing Arts Companies	30.0	29.5	30.0
711211	Sports Teams and Clubs	41.5	29.5	41.5
711212	Racetracks	41.5	33.5	41.5
711219	Other Spectator Sports	12.0	14.5	14.5
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	35.0	23.5	35.0
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities.	16.5	19.5	19.5
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.	12.0	15.5	15.5
711510	Independent Artists, Writers, and Performers	8.0	8.0	8.0
712110	Museums	30.0	25.5	30.0
712120	Historical Sites	8.0	11.5	11.5
712130	Zoos and Botanical Gardens	30.0	25.0	30.0
712190	Nature Parks and Other Similar Institutions	8.0	17.0	17.0
713110	Amusement and Theme Parks	41.5	41.5	41.5
713120	Amusement Arcades	8.0	8.0	8.0
713210	Casinos (except Casino Hotels)	30.0	25.0	30.0
713290	Other Gambling Industries	35.0	25.0	35.0
713910	Golf Courses and Country Clubs	16.5	11.0	16.5
713920	Skiing Facilities	30.0	31.0	31.0
713930	Marinas	8.0	9.5	9.5
713940	Fitness and Recreational Sports Centers	8.0	15.5	15.5
713950	Bowling Centers	8.0	11.0	11.0
713990	All Other Amusement and Recreation Industries	8.0	7.0	8.0
721110	Hotels (except Casino Hotels) and Motels	35.0	30.5	35.0
721120	Casino Hotels	35.0	31.0	35.0
721191	Bed-and-Breakfast Inns	8.0	6.5	8.0
721199	All Other Traveler Accommodation	8.0	8.0	8.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	8.0	9.0	9.0
721214	Recreational and Vacation Camps (except Campgrounds)	8.0	8.0	8.0
721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps	8.0	12.5	12.5
722310	Food Service Contractors	41.5	38.0	41.5
722320	Caterers	8.0	6.5	8.0

TABLE 2—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 61, 62, 71, 72 AND 81—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
722330	Mobile Food Services	8.0	6.5	8.0
722410	Drinking Places (Alcoholic Beverages)	8.0	6.5	8.0
722511	Full-Service Restaurants	8.0	10.0	10.0
722513	Limited-Service Restaurants	12.0	11.0	12.0
722514	Cafeterias, Grill Buffets, and Buffets	30.0	15.5	30.0
722515	Snack and Nonalcoholic Beverage Bars	8.0	20.0	20.0
811111	General Automotive Repair	8.0	8.0	8.0
811112	Automotive Exhaust System Repair	8.0	7.0	8.0
811113	Automotive Transmission Repair	8.0	6.5	8.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	8.0	7.5	8.0
811121	Automotive Body, Paint, and Interior Repair and Maintenance	8.0	7.0	8.0
811122	Automotive Glass Replacement Shops	12.0	15.5	15.5
811191	Automotive Oil Change and Lubrication Shops	8.0	9.5	9.5
811192	Car Washes	8.0	8.0	8.0
811198	All Other Automotive Repair and Maintenance	8.0	9.0	9.0
811211	Consumer Electronics Repair and Maintenance	8.0	22.5	22.5
811212	Computer and Office Machine Repair and Maintenance	30.0	17.5	30.0
811213	Communication Equipment Repair and Maintenance	12.0	19.5	19.5
811219	Other Electronic and Precision Equipment Repair and Maintenance	22.0	22.0	22.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	8.0	11.0	11.0
811411	Home and Garden Equipment Repair and Maintenance	8.0	7.0	8.0
811412	Appliance Repair and Maintenance	16.5	12.5	16.5
811420	Reupholstery and Furniture Repair	8.0	6.5	8.0
811430	Footwear and Leather Goods Repair	8.0	7.5	8.0
811490	Other Personal and Household Goods Repair and Maintenance	8.0	6.5	8.0
812111	Barber Shops	8.0	8.5	8.5
812112	Beauty Salons	8.0	8.5	8.5
812113	Nail Salons	8.0	6.5	8.0
812191	Diet and Weight Reducing Centers	22.0	24.0	24.0
812199	Other Personal Care Services	8.0	6.5	8.0
812210	Funeral Homes and Funeral Services	8.0	11.0	11.0
812220	Cemeteries and Crematories	22.0	18.5	22.0
812310	Coin-Operated Laundries and Drycleaners	8.0	11.5	11.5
812320	Drycleaning and Laundry Services (except Coin-Operated)	6.0	7.0	7.0
812331	Linen Supply	35.0	32.0	35.0
812332	Industrial Launderers	41.5	40.5	41.5
812910	Pet Care (except Veterinary) Services	8.0	6.5	8.0
812921	Photofinishing Laboratories (except One-Hour)	22.0	26.0	26.0
812922	One-Hour Photofinishing	16.5	16.0	16.5
812930	Parking Lots and Garages	41.5	25.5	41.5
812990	All Other Personal Services	8.0	13.0	13.0
813110	Religious Organizations	8.0	11.5	11.5
813211	Grantmaking Foundations	35.0	35.0	35.0
813212	Voluntary Health Organizations	30.0	27.0	30.0
813219	Other Grantmaking and Giving Services	41.5	22.5	41.5
813311	Human Rights Organizations	30.0	28.5	30.0
813312	Environment, Conservation and Wildlife Organizations	16.5	17.0	17.0
813319	Other Social Advocacy Organizations	8.0	16.0	16.0
813410	Civic and Social Organizations	8.0	8.5	8.5
813910	Business Associations	8.0	13.5	13.5
813920	Professional Organizations	16.5	20.5	20.5
813930	Labor Unions and Similar Labor Organizations	8.0	14.5	14.5
813940	Political Organizations	8.0	12.5	12.5
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	8.0	12.0	12.0

Table 3, Summary of Adopted Size Standards Revisions by Sector, summarizes the adopted changes to size standards by NAICS sector.

TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
61	Education Services	18	14	0	4
62	Health Care and Social Assistance	39	18	0	21



TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR—Continued

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
71 .....	Arts, Entertainment and Recreation .....	25	11	0	14
72 .....	Accommodation and Food Services .....	15	4	0	11
81 .....	Other Services .....	48	23	0	25
All Sectors ...	.....	145	70	0	75

### Evaluation of Dominance in Field of Operation

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the adopted size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.63%, varying from 0.003% to 22.3%. These market shares effectively preclude a firm at or below the adopted size standards from exerting control on any of the industries.

### Alternatives Considered

In response to the unprecedented economic impacts of the COVID-19 pandemic on small businesses and Government response, SBA is adopting increases to size standards where the data suggests increases are warranted, and retaining all current size standards where the data suggested lowering is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 70 industries, decreasing them for 63 industries, and retaining them at their current levels for 12 industries. Alternative Option Two was to retain all current size standards.

SBA is not adopting Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. Impacts of lowering size standards under Alternative Option One are discussed in detail in the Regulatory Impact Analysis section of this rule. Lowering size standards in the current environment would also run counter to

various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID-19 pandemic. Considering the impacts of the Great Recession and Government actions that followed to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID-19 pandemic, SBA considered retaining the current level of all size standards even though the current analysis may suggest changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because results discussed in the Regulatory Impact Analysis section, below, shows that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 70 and retaining 75 size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA's loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

### Compliance With Executive Orders 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A

statement of the need for the regulatory action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

### Regulatory Impact Analysis

#### 1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small. Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those

industries and the latest trends in Federal marketplace.

The revisions to the existing size standards for 70 industries in NAICS Sectors 61, 62, 71, 72, and 81 are consistent with SBA’s statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years.

This regulatory action promotes the Administration’s goals and objectives as well as meets the SBA’s statutory responsibility. One of SBA’s goals in support of promoting the Administration’s objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal small business programs that are designed to assist them to become competitive and create jobs.

2. *What are the potential benefits and costs of this regulatory action?*

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency’s best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

*Changes to Size Standards*

Based on the results from the analyses of the latest industry and Federal

contracting data, evaluation of the public comments on the proposed rule, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 145 industries in Sectors 61, 62, 71, 72, and 81 that have receipts-based size standards, SBA is adopting increases to size standards for 70 industries and maintaining current size standards for the remaining 75 industries (including exceptions).

*The Baseline*

For purposes of this regulatory action, the baseline represents maintaining the “status quo,” *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels of benefits (such as set-aside contracts, SBA’s loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available), of a total of about 2,016,327 businesses in industries in Sectors 61, 62, 71, 72, and 81 for which SBA evaluated their current receipts-based size standards, 98.0% are considered small under the current size standards. That percentage varies from 95.9% in Sector 61 to 98.8% in Sector 81. Based on the data from FPDS–NG for fiscal years 2018–2020, about 23,250 unique firms in those industries with receipts-based size standards, received at least one Federal contract during that period, of which 76.6% were small under the current size standards. For these sectors, of about \$19 billion in total average annual contract dollars awarded to businesses during that period, 27.9% went to small businesses. From the total small business contract

dollars awarded during the period considered, 66.4% were awarded through various small business set-aside programs and 33.6% were awarded through non-set aside contracts.

Based on the SBA’s internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 21,350 7(a) and 504 loans in that period, totaling about \$12.3 billion, of which 82.3% was issued through the 7(a) program and 17.7% was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 1,104 loans through the SBA’s Economic Injury Disaster Loan (EIDL) program, totaling about \$53.3 million on an annual basis.<sup>2</sup> Table 4, Baseline for All Industries, below, provides these baseline results by sector.

*Increases to Size Standards*

As stated above, of 145 receipts-based size standards in Sectors 61, 62, 71, 72, and 81 reviewed, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and the consideration of comments to the proposed rule, SBA is adopting increases to size standards for 70 industries. Below are descriptions of the benefits, costs, and transfer impacts of the increases to size standards adopted in this final rule.

The results of regulatory impact analyses SBA provided in the November 2020 proposed rule were based on the FPDS–NG and SBA loan data for fiscal years 2016–2018. In this final rule, SBA is updating the impact analysis results by using the FPDS–NG and SBA loan data for fiscal years 2018–2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

TABLE 4—BASELINE FOR ALL INDUSTRIES

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
Baseline All Industries (current size standards) .....	18	39	25	15	48	145
Total firms (2012 Economic Census) .....	84,084	653,143	114,926	496,856	667,318	2,016,327
Total small firms under current size standards (2012 Economic Census) ....	80,620	632,077	112,612	490,773	659,559	1,975,640
Small firms as % of total firms .....	95.9%	96.8%	98.0%	98.8%	98.8%	98.0%

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan

analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data

limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

TABLE 4—BASELINE FOR ALL INDUSTRIES—Continued

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
Total contract dollars (\$ million) (FPDS–NG FY2018–2020) .....	\$3,624	\$11,143	\$240	\$837	\$3,270	\$19,114
Total small business contract dollars under current standards (\$ million) (FPDS–NG FY2020–2018) .....	\$1,510	\$2,393	\$170	\$450	\$815	\$5,338.
Small business dollars as % of total dollars (FPDS–NG FY2018–2020) .....	41.7%	21.5%	71.0%	53.8%	24.9%	27.9%
Total No. of unique firms getting contracts (FPDS–NG FY2018–2020) .....	3,651	6,040	971	3,162	10,096	23,251
Total No. of unique small firms getting small business contracts (FPDS–NG FY2018–2020) .....	2,772	4,950	867	2,625	6,935	17,799
Small business firms as % of total firms	75.9%	82.0%	89.3%	83.0%	68.7%	76.6%
No. of 7(a) and 504/CDC loans (FY 2018–2020) .....	872	5,248	2,030	7,838	5,362	21,350
Amount of 7(a) and 504 loans (\$ million) (FY 2018–2020) .....	\$365	\$3,117	\$1,045	\$5,328	\$2,421	\$12,276
No. of EIDL loans (FY 2018–2020) * .....	51	317	101	298	337	1,104
Amount of EIDL loans (\$million) (FY 2018–2020) * .....	\$2.2	\$20.2	\$4.7	\$16.2	\$10.0	\$53.3

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

### Benefits of Increasing Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining that eligibility for a longer period. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/ Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above,

small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 70 industries in NAICS Sectors 61, 62, 71, 72, and 81 for which it is increasing size standards, about 4,700 firms (see Table 5), not small under the current size standards, will become small under the adopted size standards increases and therefore become eligible for these programs. That represents about 0.4% of all firms classified as small under the current size standards in industries for which SBA is adopting increases to size standards. SBA's revised size standards would result in an increase to the small business share of total receipts in those industries from 37.4% to 38.5%.

With more businesses qualifying as small under the adopted increases to size standards, Federal agencies will

have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 238 firms that are active in Federal contracting in those industries would gain small business status under the adopted size standards. Based on the same data, SBA estimates that those newly qualified small businesses under the increases to 70 size standards could receive Federal small business contracts totaling about \$60 million annually. That represents a 2.3% increase to small business dollars from the baseline. Table 5, Impacts of Increasing Size Standards, provides these results by NAICS sector.

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
No. of industries with increases to size standards .....	14	18	11	4	23	70
Total current small businesses in industries with increases to size standards (2012 Economic Census) .....	53,788	350,287	47,893	243,299	428,410	1,123,676
Additional firms qualifying as small under standards (2012 Economic Census) ....	708	1,464	265	599	1,671	4,708
Percentage of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	1.3%	0.4%	0.6%	0.3%	0.4%	0.4%

TABLE 5—IMPACTS OF INCREASING SIZE STANDARDS—Continued

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS-NG FY2018-2020) <sup>1</sup> .....	2,627	2,944	306	689	2,906	9,302
Additional small business firms getting small business status (FPDS-NG FY2018-2020) .....	32	30	9	0	173	238
% increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS-NG FY2018-2020) <sup>1</sup> .....	1.2%	1.0%	2.9%	0.0%	6.0%	2.6%
Total small business contract dollars under current standards in industries with increases to size standards (\$ million) (FPDS-NG FY2018-2020) .....	\$1,278	\$1,068	\$26	\$12	\$269	\$2,652
Estimated additional small business dollars available to newly qualified small firms (Using avg dollars obligated to SBs) (\$ million) (FPDS-NG FY 2018-2020) <sup>1</sup> .....	\$25.9	\$15.7	\$2.2	\$0.0	\$16.3	\$60.1
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards .....	2.0%	1.5%	8.5%	0.1%	6.0%	2.3%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018-2020) .....	501	2,795	1,370	3,770	2,374	10,810
Total amount of 7(a) and 504 loans to small businesses in industries with increases to size standards (\$ million) (FY 2018-2020) .....	\$201	\$1,840	\$639	\$1,580	\$936	\$5,196
Estimated no. of 7(a) and 504 loans to newly qualified small firms .....	7	12	8	10	10	47
Estimated 7(a) and 504 loan amounts to newly qualified small firms (\$ million) ..	\$2.8	\$7.9	\$3.7	\$4.2	\$3.9	\$22.6
% increase to 7(a) and 504 loan amounts relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	1.4%	0.4%	0.6%	0.3%	0.4%	0.4%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018-2020) <sup>3</sup> .....	36	178	38	157	171	580
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY 2018-2020) <sup>3</sup> .....	\$1.8	\$11.0	\$1.8	\$9.5	\$5.1	\$29.0
Estimated no. of EIDL loans to newly qualified small firms <sup>3</sup> .....	1	1	1	1	1	5
Estimated EIDL loan amount to newly qualified small firms (\$ million) <sup>3</sup> .....	\$0.05	\$0.06	\$0.05	\$0.06	\$0.03	\$0.25
% increase to EIDL loan amount relative to the total amount of EIDL loans in industries with increases to size standards <sup>3</sup> .....	2.8%	0.6%	2.6%	0.6%	0.6%	0.9%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

The added competition from more businesses qualifying as small can result in lower prices to the Federal Government for procurements set-aside or reserved for small businesses, but SBA cannot quantify this impact. Costs

could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the

availability of a larger pool of small businesses under the adopted increases to size standards, HUBZone firms might receive more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to

agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

As shown in Table 5, under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 47 SBA 7(a) and 504 loans totaling about \$ 22.6 million could be made to these newly-qualified small businesses in those industries under the adopted size standards. That represents a 0.4% increase to the loan amount compared to the group baseline.

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Because the benefits provided through this program are contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the disaster loan program data, SBA estimates that, on an annual basis, the newly-defined small businesses under the adopted increases to size standards could receive five disaster loans, totaling about \$0.3 million.

Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

#### *Costs of Increasing Size Standards*

Besides having to register in the System for Award Management (SAM) to be eligible to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status as a result of increases to size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. This final rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly qualified small businesses could become active in Federal procurement, the adopted

increases to size standards may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé program. With an expanded pool of small businesses, it is likely that Federal agencies would set-aside more contracts for small businesses under the adopted increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number size protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013), as compared to about 500 during fiscal years 2018–2020 when size standards increases were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the adopted increases to size standards, Federal agencies may choose to set-aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the adopted size standards.

However, the additional costs associated with fewer bidders are expected to be minor because, by law, procurements may be set-aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the adopted increases to size standards, HUBZone firms might end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

#### *Transfer Impacts of Increasing Size Standards*

The increases to 70 size standards that are adopted in this final rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the adopted increases to size standards, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the adopted increases to size standards. This impact may be offset by a greater number of procurements being set-aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

### 3. What alternatives have been considered?

Under OMB Circular A-4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 70 industries for which the analytical results, as presented in Table 4 of the November 2020 proposed rule, suggest raising them would be raised. However, the size standards of 63 industries or subindustries for which the analytical results suggest lowering them would be lowered. For the 12 remaining industries or subindustries for which the analysis suggested no changes, size standards would be maintained at their current levels. Alternative Option Two would propose retaining size standards for all industries, given the uncertainty generated by the ongoing COVID-19 pandemic. Below, SBA discusses the benefits, costs, and net impacts of each option.

#### *Alternative Option One: Adopting All Calculated Size Standards*

As discussed previously in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID-19 pandemic and the measures taken to protect public health, SBA has

decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefit of adopting Alternative Option One would include: (1) SBA's procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability in SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set aside opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the Size Standards Methodology white paper, in addition to adopting all results of the primary analysis, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses and may adopt different results with the intention of mitigating potential negative impacts.

We have discussed already the benefits, costs, and transfer impacts of increasing 70 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 63 size standards based on the analytical results.

#### *Benefits of Decreasing Size Standards*

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for

small businesses under SBA's business development programs, such as small business, SDB, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of calculated size standards diminishes the risk of awarding contracts to firms that are not small anymore.

Decreasing size standards may reduce the administrative costs of the Federal Government, because the risk of awarding set-aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also diminish the risks of providing SBA's loans to firms that do not need them the most. This may provide a better chance for smaller small firms to grow and benefit from the opportunities available on the Federal marketplace, and strengthen the small business industrial base for the Federal Government.

#### *Costs of Decreasing Size Standards*

Table 6, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 63 industries based solely on the analytical results. Based on the 2012 Economic Census, about 1,700 (0.3%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS-NG data for fiscal years 2018-2020, 169 (2.4%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, during fiscal years 2018-2020, agencies awarded, on an annual basis, about \$2.2 billion in small business contracts in those 63 industries for which SBA considered decreasing size standards under Alternative Option One. Lowering size standards in 63 industries and subindustries would reduce Federal contract dollars awarded to small businesses by \$110 million or about 5.0% relative to the baseline level.

TABLE 6—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	4	18	11	9	21	63
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	26,832	257,179	39,737	243,637	129,388	696,774
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	21	828	259	399	211	1,718
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards .....	0.08%	0.32%	0.65%	0.16%	0.16%	0.25%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) <sup>1</sup> .....	164	2,083	260	1,920	2,538	6,934
Estimated number of small business firms that would have lost small business status in the decreases that SBA considered <sup>1</sup> .....	1	65	1	25	78	169
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY2018-2020) <sup>1</sup> .....	0.6%	3.1%	0.4%	1.3%	3.1%	2.4%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS-NG FY2018-2020) .....	\$232	\$1,279	\$19	\$437	\$245	\$2,212
Estimated small business dollars not available to firms that would have lost business status (using avg. dollars obligated to SBs) (\$ million) <sup>1</sup> (FPDS-NG FY 2018-2020) <sup>2</sup> .....	\$2.5	\$88.2	\$0.1	\$4.8	\$14.2	\$109.8
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing to size standards .....	1.1%	6.9%	0.5%	1.1%	5.8%	5.0%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018-2020) .....	371	2,066	507	4,035	1,687	8,666
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018-2020) .....	\$163.4	\$1,100.5	\$342.3	\$3,728.5	\$605.4	\$5,940.1
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	1	7	4	7	3	22
Estimated 7(a) and 504 loan amounts not available to firms that would have small status (\$ million) .....	\$0.4	\$3.7	\$6.5	\$6.5	\$1.1	\$18.2
% decrease to 7(a) and 504 loan amounts relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	0.3%	0.3%	1.9%	0.2%	0.2%	0.3%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018-2020) .....	15	124	42	130	102	413
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018-2020) .....	\$0.4	\$8.2	\$2.4	\$6.1	\$3.0	\$20.2
Estimated no. of EIDL loans not available to firms that would have lost small business status .....	1	1	1	1	1	5
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) .....	\$0.03	\$0.07	\$0.06	\$0.05	\$0.03	\$0.23
% decrease to EIDL loan amount relative to the baseline .....	6.7%	0.8%	2.4%	0.8%	1.0%	1.1%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Because of the importance of these sectors for the Federal procurement, SBA could adopt mitigating measures to reduce the negative impact under the assumptions of Alternative Option One. SBA could adopt one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results; (2) Decrease size standards by a smaller amount than the calculated threshold; and (3) Retain the size standards at their current levels.

Nevertheless, because Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity are likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 6, decreasing size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about 22 of SBA's 7(a) and 504 loans with total amounts of \$18.2 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 0.3% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's 7(a) and 504 loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted by way

of access to loans through SBA's EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. Because this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about five of EIDL loans with total amounts of \$0.2 million could not be made to those small businesses that would lose eligibility under the reduced size standards. That represents about 1.1% decrease of the disaster loan amounts compared to the baseline (see Table 6).

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs

*Transfer Impacts of Decreasing Size Standards Under Alternative One*

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the adopted increases to size standards, it would have no impact on the overall economic activity because the total Federal contract dollars available for businesses to compete for will stay the same. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal

contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

*Net Impacts of Alternative Option One*

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts of increasing size standards (see Table 5). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted increases to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 5 above. Table 6 and Table 7, Net Impacts of Size Standards Changes under Alternative Option One, present the impact of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option One, respectively.

Based on the 2012 Economic Census, SBA estimates that in 133 industries in NAICS Sectors 61, 62, 71, 72, and 81 for which the analytical results suggested to change size standards, about 2,990 firms would become small under Alternative Option One. That represents about 0.2% of all firms classified as small under the current size standards in these industries. That is about 1,710 fewer firms qualifying as small under Alternative Option One, which represents a 36% reduction from about 4,700 firms that would qualify as small (see Table 5) under the proposal being adopted in this final rule (i.e., increasing 70 and retaining 75 size standards).

TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
No. of industries with changes to size standards .....	17	36	22	13	44	132



TABLE 7—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 61	Sector 62	Sector 71	Sector 72	Sector 81	Total
Total no. of small business under the current size standards (2012 Economic Census) .....	80,620	607,466	87,630	486,936	557,798	1,820,450
Additional firms qualifying as small under size standards (2012 Economic Census) .....	687	636	6	200	1,460	2,990
% of additional firms qualifying as small relative to total current small businesses .....	0.85%	0.10%	0.01%	0.04%	0.26%	0.16%
No. of current unique small firms getting small business contracts (FPDS-NG FY2018-2020) <sup>1</sup> .....	2,772	4,839	556	2,607	5,292	15,778
Additional small firms getting small business status (FPDS-NG FY2018-2020) <sup>1</sup> .....	31	-35	8	-25	83	52
% increase to small firms relative to current unique small firms getting small business contracts (FPDS-NG FY2018-2020) .....	1.1%	-0.7%	1.4%	-1.0%	1.6%	0.3%
Total small business contract dollars under current size standards (\$ million) (FPDS-NG FY2018-2020) .....	\$1,510	\$2,347	\$44	\$448	\$514	\$4,864
Estimated small business dollars available to newly qualified small firms (\$ million) (FPDS-NG FY 2018-2020) <sup>2</sup> ..	\$23.4	-\$72.6	\$2.1	-\$4.8	\$2.1	-\$49.7
% increase to dollars relative to total small business contract dollars under current size standards .....	1.6%	-3.1%	4.7%	-1.1%	0.4%	-1.0%
Total no. of 7(a) and 504 loans to small businesses (FY 2018-2020) .....	872	5,248	2,030	7,838	5,362	21,350
Total amount of 7(a) and 504 loans to small businesses (FY 2018-2020) .....	\$365	\$3,117	\$1,045	\$5,328	\$2,421	\$12,276
Estimated no. of additional 7(a) and 504 loans to newly qualified small firms .....	6	5	4	3	7	25
Estimated additional 7(a) and 504 loan amount to newly qualified small firms (\$ million) .....	\$2.4	\$4.2	-\$2.7	-\$2.3	\$2.9	\$4.4
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	0.7%	0.1%	-0.3%	0.0%	0.1%	0.04%
Total no. of EIDL loans to small businesses (FY 2018-2020) <sup>3</sup> .....	51	317	101	298	337	1,104
Total amount of EIDL loans to small businesses (FY 2018-2020) <sup>3</sup> .....	\$2.2	\$20.2	\$4.7	\$16.2	\$10.0	\$53.3
Estimated no. of additional EIDL loans to newly qualified small firms <sup>3</sup> .....	0	0	0	0	0	0
Estimated additional EIDL loan amount to newly qualified small firms (\$ million) <sup>3</sup> .....	\$0.02	-\$0.01	-\$0.01	\$0.01	\$0.00	\$0.02
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses <sup>3</sup> .....	0.85%	-0.02%	-0.24%	0.08%	0.01%	0.03%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Based on the FPDS-NG data for fiscal years 2018-2020, in aggregate, SBA estimates that about 52 active firms in Federal contracting in those industries would gain small business status under Alternative Option One, most of them from Sector 81. This represents an increase of about 0.3% of the total number of small businesses participating in Federal contracting

under the current size standards. Based on the same data, SBA estimates that about \$49.7 million of Federal procurement dollars would not be available to firms losing their small status. This represents a decrease of 1.0% from the baseline. A large amount of the losses is accounted for by Sector 62 (see Table 7).

Based on the SBA's loan data for fiscal years 2018-2020, the total number of 7(a) and 504 loans will increase by 25 loans, while the total loan amount will increase by about \$4.4 million. This represents a 0.04% increase of the loan amounts relative to the group baseline.

Firms' participation under the SBA's EIDL program will be affected as well. Because the benefit provided through

this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL loan data, SBA estimates that the total number of disaster loans will be unchanged, while the total loan amount will increase by about \$.02 million. This represents a 0.03% increase of the loan amounts relative to the baseline.

#### *Alternative Option Two: Retaining All Current Size Standards*

Under this option, given the current COVID-19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.*, zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.*, access to set-aside contracts and capital) that become available to them under the option of increasing 70 and retaining 75 size standards adopted in this final rule. Moreover, retaining all size standards under this option would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

#### **Congressional Review Act**

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that

this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **Final Regulatory Flexibility Analysis**

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule, if adopted, may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504, and EIDL programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule, and (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

##### *1. What is the need for and objective of the rule?*

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many of the industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review every five years all size standards and make necessary adjustments to reflect market conditions.

##### *2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?*

Based on data from the 2012 Economic Census, SBA estimates that there are about 1,820,450 small firms covered by this rulemaking under industries with changes to size standards. Under this final rule, SBA estimates that an additional 2,990 businesses will be defined as small.

##### *3. What are the projected reporting, record keeping and other compliance requirements of the rule?*

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. Changes in small business size standards do not result in additional costs associated with SAM registration or certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

##### *4. What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?*

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

##### *5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?*

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 70 and maintaining 75 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 70 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 63 industries for which the analytical results suggest lowering them would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 62 (see Table 6). Under the second alternative, in view of the COVID-19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 70 and decreasing 63 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 70 and retaining 75 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

#### Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size

standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled “Size Standards Methodology” and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review. The “Size Standards Methodology” white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this final rule. SBA received a total of 12 comments to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

#### Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

#### Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

#### List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

#### PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694(a)(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table “Small Business Size Standards by NAICS Industry” by revising the entries for “611110”, “611210”, “611310”, “611410”, “611420”, “611430”, “611511”, “611513”, “611519”, “611519 (Exception)”, “611630”, “611691”, “611692”, “611699”, “611710”, “621111”, “621340”, “621399”, “621410”, “621491”, “621498”, “621511”, “621910”, “621999”, “623312”, “623990”, “624110”, “624120”, “624190”, “624210”, “624230”, “624310”, “624410”, “711120”, “711130”, “711219”, “711320”, “711410”, “712120”, “712190”, “713920”, “713930”, “713940”, “713950”, “721211”, “721310”, “722511”, “722515”, “811122”, “811191”, “811198”, “811211”, “811213”, “811310”, “812111”, “812112”, “812191”, “812210”, “812310”, “812320”, “812921”, “812990”, “813110”, “813312”, “813319”, “813410”, “813910”, “813920”, “813930”, “813940”, and “813990” to read as follows:

#### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

\* \* \* \* \*

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sector 61—Educational Services</b>			
<b>Subsector 611—Educational Services</b>			
611110	Elementary and Secondary Schools	\$17.5	
611210	Junior Colleges	28.5	
611310	Colleges, Universities and Professional Schools	30.5	
611410	Business and Secretarial Schools	18.0	
611420	Computer Training	14.0	
611430	Professional and Management Development Training	13.0	
611511	Cosmetology and Barber Schools	11.5	
611513	Apprenticeship Training	10.0	
611519	Other Technical and Trade Schools	18.5	
611519 (Exception)	Job Corps Centers <sup>16</sup>	16 41.5	
611630	Language Schools	18.0	
611691	Exam Preparation and Tutoring	11.0	
611692	Automobile Driving Schools	9.0	
611699	All Other Miscellaneous Schools and Instruction	14.5	
611710	Educational Support Services	21.0	
<b>Sector 62—Health Care and Social Assistance</b>			
<b>Subsector 621—Ambulatory Health Care Services</b>			
621111	Offices of Physicians (except Mental Health Specialists)	14.0	
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	11.0	
621399	Offices of All Other Miscellaneous Health Practitioners	9.0	
621410	Family Planning Centers	16.5	
621491	HMO Medical Centers	39.0	
621498	All Other Outpatient Care Centers	22.5	
621511	Medical Laboratories	36.5	
621910	Ambulance Services	20.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	18.0	
<b>Subsector 623—Nursing and Residential Care Facilities</b>			
623312	Assisted Living Facilities for the Elderly	20.5	
623990	Other Residential Care Facilities	14.0	
<b>Subsector 624—Social Assistance</b>			
624110	Child and Youth Services	13.5	
624120	Services for the Elderly and Persons with Disabilities	13.0	
624190	Other Individual and Family Services	14.0	
624210	Community Food Services	17.0	
624230	Emergency and Other Relief Services	36.5	
624310	Vocational Rehabilitation Services	13.0	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
624410	Child Day Care Services	8.5	
<b>Sector 71—Arts, Entertainment and Recreation</b>			
<b>Subsector 711—Performing Arts, Spectator Sports and Related Industries</b>			
* 711120	* Dance Companies	* 16.0	* .....
* 711130	* Musical Groups and Artists	* 13.0	* .....
* 711219	* Other Spectator Sports	* 14.5	* .....
* 711320	* Promoters of Performing Arts, Sports and Similar Events without Facilities	* 19.5	* .....
* 711410	* Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	* 15.5	* .....
<b>Subsector 712—Museums, Historical Sites and Similar Institutions</b>			
* 712120	* Historical Sites	* 11.5	* .....
* 712190	* Nature Parks and Other Similar Institutions	* 17.0	* .....
<b>Subsector 713—Amusement, Gambling and Recreation Industries</b>			
* 713920	* Skiing Facilities	* 31.0	* .....
* 713930	* Marinas	* 9.5	* .....
* 713940	* Fitness and Recreational Sports Centers	* 15.5	* .....
* 713950	* Bowling Centers	* 11.0	* .....
<b>Sector 72—Accommodation and Food Services</b>			
<b>Subsector 721—Accommodation</b>			
* 721211	* RV (Recreational Vehicle) Parks and Campgrounds	* 9.0	* .....
* 721310	* Rooming and Boarding Houses, Dormitories, and Workers' Camps	* 12.5	* .....
<b>Subsector 722—Food Services and Drinking Places</b>			
* 722511	* Full-Service Restaurants	* 10.0	* .....
* 722515	* Snack and Nonalcoholic Beverage Bars	* 20.0	* .....
<b>Sector 81—Other Services</b>			
<b>Subsector 811—Repair and Maintenance</b>			
* 811122	* Automotive Glass Replacement Shops	* 15.5	* .....
* 811191	* Automotive Oil Change and Lubrication Shops	* 9.5	* .....
* 811198	* All Other Automotive Repair and Maintenance	* 9.0	* .....
* 811211	* Consumer Electronics Repair and Maintenance	* 22.5	* .....

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
811213	Communication Equipment Repair and Maintenance	19.5	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	11.0	
<b>Subsector 812—Personal and Laundry Services</b>			
812111	Barber Shops	8.5	
812112	Beauty Salons	8.5	
812191	Diet and Weight Reducing Centers	24.0	
812210	Funeral Homes and Funeral Services	11.0	
812310	Coin-Operated Laundries and Drycleaners	11.5	
812320	Dry cleaning and Laundry Services (except Coin-Operated)	7.0	
812921	Photofinishing Laboratories (except One-Hour)	26.0	
812990	All Other Personal Services	13.0	
<b>Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations</b>			
813110	Religious Organizations	11.5	
813312	Environment, Conservation and Wildlife Organizations	17.0	
813319	Other Social Advocacy Organizations	16.0	
813410	Civic and Social Organizations	8.5	
813910	Business Associations	13.5	
813920	Professional Organizations	20.5	
813930	Labor Unions and Similar Labor Organizations	14.5	
813940	Political Organizations	12.5	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	12.0	

**Footnotes**

<sup>16</sup> NAICS code 611519—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Isabella Casillas Guzman,  
Administrator.

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**SMALL BUSINESS ADMINISTRATION****13 CFR Part 121**

RIN 3245-AG91

**Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services****AGENCY:** U.S. Small Business Administration.**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is increasing its receipts-based small business size definitions (commonly referred to as “size standards”) for North American Industry Classification System (NAICS) sectors related to Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services. Specifically, SBA is increasing the size standards for 46 industries in those sectors, including 27 industries in NAICS Sector 54 (Professional, Scientific and Technical Services), two industries in Sector 55 (Management of Companies and Enterprises), and 17 industries in Sector 56 (Administrative and Support and Waste Management and Remediation Services).

**DATES:** This rule is effective May 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Samuel Castilla, Economist, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:****Discussion of Size Standards**

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as “size standards”) for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504, September 27, 2010) (“Jobs Act”), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA’s latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget’s (OMB) quinquennial North American Industry Classification System (NAICS) revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB’s 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).<sup>1</sup>

This final rule is one of a series of final rules that will revise size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.*, employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards, SBA reviewed all receipt-based size standards in NAICS Sector 54 (Professional, Scientific and Technical Services), Sector 55 (Management of Companies and Enterprises), and Sector 56 (Administrative and Support and Waste Management and Remediation Services) to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After

its review, SBA published in the November 13, 2020, issue of the **Federal Register** (85 FR 72584) a proposed rule to increase the size standards for 27 industries in NAICS Sector 54, two industries in Sector 55, and 17 industries in Sector 56. In this final rule, SBA is adopting the proposed size standards from the November 2020 proposed rule without change.

In conjunction with the current comprehensive size standards review, SBA developed a revised “Size Standards Methodology” (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA’s revised Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA’s “Size Standards Methodology” white paper is available on its website at [www.sba.gov/size](http://www.sba.gov/size).

In evaluating an industry’s size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each receipt-based industry in NAICS Sectors 54, 55, and 56, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available). The 2012 special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and

<sup>1</sup> On December 21, 2021, the U. S. Office of Management and Budget (OMB) published its “Notice of NAICS 2022 Final Decisions . . .” (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), . . . .” In the near future, SBA will issue a proposed rule to adopt the OMB NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association’s (RMA) Annual eStatement Studies (<http://www.rmahq.org/estatement-studies/>) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business

level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS-NG) for fiscal years 2016–2018.

Table 4 of the November 2020 proposed rule (85 FR 72584), Size Standards Supported by Each Factor for Each Industry (Receipts), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (exception) covered by the proposed rule. Of the 91

industries and three subindustries (*i.e.*, exceptions) reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors supported increasing size standards for 46 industries, decreasing size standards for 40 industries and two subindustries, and maintaining size standards for six remaining industries. Table 1, Summary of Calculated Size Standards, summarizes the analytical results from the proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
54 .....	Professional, Scientific and Technical Services .....	48	27	18	3
55 .....	Management of Companies and Enterprises .....	2	2	0	0
56 .....	Administrative and Support and Waste Management and Remediation Services.	44	17	24	3
All Sectors	.....	94	46	42	6

In the November 2020 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and society in general. Recognizing the wide-ranging economic impact of the pandemic, SBA decided not to lower any size standards notwithstanding analysis that suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size standards. To evaluate the impact of the changes to size standards adopted in this final rule on Federal contracting and SBA’s loan programs, SBA analyzed FPDS-NG data for fiscal years 2018–2020 and its internal data on its loan programs for fiscal years 2018–2020. The results of that analysis can be found in the Regulatory Impact Analysis section of this final rule.

In the proposed rule, SBA sought comments on its proposal to increase size standards for 46 industries, and retain the current size standards for the remaining 48 industries or subindustries in Sectors 54, 55, and 56. Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule; whether the decision not to lower any size standards is justified by the consideration of the impact of the COVID–19 pandemic on small businesses and overall economy; whether the equal weighting of individual factors to derive an industry

size standard is appropriate; and whether the data sources used were appropriate or sufficient.

**Discussion of Comments**

SBA received a total of 93 comments to the proposed rule from a wide range of entities, including individuals, businesses/corporations, trade associations, and academic institutions. Of the 93 comments received, ten comments were either invalid (blank) or not relevant to the proposed rule and three comments were submitted twice. Among the remaining 80 unique and pertinent comments, 45 referenced to the size standard for NAICS 541330, six to NAICS 541310, 24 to NAICS 541930, six to other industries, including NAICS 541810, 541611, 541990, and 541350, and six did not specify any 6-digit NAICS code. Of the 80 pertinent comments to the proposed rule, 45 or 56% expressed support for the proposed changes; 16 or 20% opposed the proposed changes; 16 or 20% expressed mixed support or suggested alternatives; and the rest took other positions or raised other issues. Comments also included a submission from SBA detailing a December 17, 2020, meeting that occurred between SBA and a trade association regarding SBA’s size standard methodology and its calculations used in deriving the proposed size standard for engineering services. All comments are available at [www.regulations.gov](http://www.regulations.gov) (RIN 3245-AG91) and are summarized and discussed below.

*Comments on Proposed Changes to NAICS 541310—Architectural Services and NAICS 541350—Building Inspection Services*

SBA received a total of six comments to its proposal to increase the size standard for NAICS 541310 (Architectural Services) from \$8 million to \$11 million. All commenters supported an increase to the size standard; however, two commenters recommended that SBA adopt a larger increase while the remaining four commenters supported increasing the size standard to the proposed \$11 million level. Of the four comments fully supporting the SBA’s proposal, three stated that the SBA’s analysis and proposed \$11 million size standard appropriately reflect the current industry characteristics and market conditions in NAICS 541310. Three commenters also expressed support for the SBA’s proposed increase to the size standard for NAICS 541350 (Building Inspection Services) from \$8 million to \$10 million but did not provide any specific data or analysis relevant to that industry.

One commenter in support of the SBA’s proposed increase to the size standard for NAICS 541310 expressed that the current size standard makes it difficult for small architectural firms to compete in the Federal marketplace upon graduating from the size standard, especially when competing with firms that are tens or hundreds of times larger than they are. The commenter concluded that the SBA’s proposed increase would benefit all small



companies, providing larger small businesses with an opportunity to successfully graduate from the size standard while still protecting smaller small businesses from competing with dominant firms. Another commenter expressed support for the SBA’s proposal based on the impacts on emerging companies, maintaining that the proposed size standard is appropriate, and it will encourage new entrants to the Federal marketplace.

Commenters in support of a size standard higher than the SBA’s proposed size standard of \$11 million for NAICS 541310 included an anonymous commenter and an architectural and engineering services firm. These commenters recommended that SBA increase the size standard for NAICS 541310 to at least \$22.5 million to match the proposed size standard for NAICS 541330 (Engineering Services). One commenter argued that the SBA’s proposed size standard does not adequately prepare firms graduating from the size standard to compete with larger and more established firms under full and open competition. This commenter also expressed that a higher size standard is necessary to account for the large volume of subcontracting dollars that flow from architectural firms to engineering firms and suggested that SBA explore ways to modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors. Another commenter expressed similar concerns to those mentioned above and recommended that SBA establish a common size standard between NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) to better reflect the similarities between the two industries.

**SBA’s Response**

SBA agrees with commenters that the proposed \$11 million size standard for NAICS 541310 would benefit all small firms. A larger size standard will extend the time that small firms can remain small and increase the number of firms eligible for SBA’s assistance intended for small businesses. As a result of this expanded runway, small firms can acquire more experience and technical capabilities to be able to compete with larger firms upon graduation from the size standard. Moreover, with an expanded pool of small businesses, the Federal Government will have more qualified small businesses to choose from, and as a result, will likely set aside more contracts for small businesses, thereby increasing Federal opportunities for all small businesses.

SBA disagrees with commenters that the size standard for Engineering Services should be aligned with other industries, such as Architectural Services, that may perform similar activities. Although Engineering and Architectural Services are often co-dependent business activities, SBA’s analysis of these industries, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that the industry structures and economic characteristics of the firms providing architectural and engineering services are markedly different, justifying a unique size standard for each industry. SBA discusses these differences in more detail in the response to comments to NAICS 541330, below.

As discussed in detail in the response to comments on NAICS 541330 (below), as part of the first five-year review of size standards under the Jobs Act, SBA proposed a common \$19 million size standard for NAICS 541310, NAICS 541330, and other industries in NAICS Industry Group 5413 (Architectural,

Engineering, and Related Services), which was overwhelmingly rejected by commenters on the grounds that these industries are vastly different, and each industry should have a unique size standard.

SBA does not agree with commenters that firms just above the current or proposed size standard are not competitive in the Federal marketplace. SBA analyzed the data from FPDS–NG for fiscal years 2018–2020 to determine the range of Federal contracting opportunities available to architectural firms above the current or proposed size standard. These results are presented in Table 2, Distribution of Contracting Dollars and Industry Receipts by Firm Size in NAICS 541310. SBA’s analysis showed that 49.4% of the total dollars obligated to NAICS 541310 went to firms below the proposed \$11 million size standard and 56.6% of the total dollars obligated went to firms below the commenters’ suggested size standard of \$22.5 million. The data shows that there is not a disproportionate share of Federal contracting opportunities available to firms that have exceeded the size standard. For example, based on the FPDS–NG data for fiscal years 2018–20, SBA determined that 15.6% of the total dollars obligated to NAICS 541310 went to firms above the current \$8 million size standard but below the \$22.5 million size standard suggested by commenters. Using the 2012 Economic Census special tabulation, SBA determined that 18% of total industry receipts in NAICS 541310 went to firms above the current \$8 million size standard but below the \$22.5 million size standard suggested by commenters. Similarly, 50.6% of total contract dollars and 44.1% of total receipts in NAICS 541310 went to firms above the proposed \$11 million size standard.

**TABLE 2—DISTRIBUTION OF CONTRACTING DOLLARS AND INDUSTRY RECEIPTS BY FIRM SIZE IN NAICS 541310**

Firm size in receipts (\$ million)	Total dollars obligated (\$ million)	Share of total dollars obligated (%)	Total industry receipts (\$ million)	Share of total industry receipts (%)
<= \$8.0 .....	361	41.0	14,231	50.6
>\$8.0 and <= \$11.0 .....	74	8.4	1,490	5.3
>\$11.0 and <= \$22.5 .....	64	7.2	3,568	12.7
>\$22.5 .....	382	43.4	8,840	31.4
<b>Total .....</b>	<b>882</b>	<b>100</b>	<b>28,129</b>	<b>100</b>

Thus, based on SBA’s methodology for evaluating size standards, SBA finds that there are adequate Federal contracting opportunities for small firms at the current or proposed size standard

that have graduated from their small business size status because the share of Federal contracting dollars being awarded to small firms in that size range is generally proportionate to their

respective share of industry receipts. Table 2 summarizes these results.

Regarding the comment that SBA should modify its definition of receipts to allow for the exclusion of amounts

paid to third-party subcontractors (usually referred to as “pass-throughs”), SBA disagrees. SBA does not allow for the exclusion of pass-throughs because they are part of the usual and customary costs of doing business. SBA acknowledges that the architectural and engineering services industries may have more subcontracting costs than other industries. Accordingly, SBA considers “pass-throughs,” and other similar factors, as secondary factors when it establishes small business size standards. Specifically, the Economic Census data that SBA uses in its size standards analysis includes all revenues received by companies, including the values of their subcontracts. If the pass-throughs were allowed to be excluded from the calculation of receipts, SBA would also have to revise its methodology to establish a lower size standard to reflect the size of the industry without them. Thus, SBA does not believe it is reasonable to exclude these costs from the calculation of receipts.

For the reasons stated above, SBA is adopting the proposed \$11 million size standard for NAICS 541310 without change. Similarly, in the absence of opposing comments, SBA is also adopting the \$10 million size standard for NAICS 541350, as proposed.

#### *Comments on Proposed Changes to NAICS 541330—Engineering Services*

SBA received a total of 45 comments on its proposal to increase the size standard for NAICS 541330 (Engineering Services) from \$16.5 million to \$22.5 million. Of those 45 comments, 24 expressed support for the proposed increase, six opposed the proposal, 14 expressed mixed support for the proposal, and one comment was from SBA. Of the 14 comments expressing mixed support for the SBA’s proposed \$22.5 million size standard for this industry, 12 comments (which were almost identical) petitioned SBA to further increase the size standard for NAICS 541330 to at least \$39.5 million. One of these 12 comments was submitted on behalf of the 12 engineering companies, several of which also submitted their own comment including more or less the same information. The comments also included a submission from SBA detailing a meeting that occurred during the comment period between SBA and an engineering industry trade association regarding SBA’s size standard methodology and its calculations used in deriving the proposed size standard for the Engineering Services industry. The same trade association also submitted

its own comment detailing its concerns with the data and approach SBA used to analyze the size standard for NAICS 541330. SBA summarizes these comments and provides its responses below.

#### *Comments Supporting the Proposed \$22.5 Million Size Standard*

Of the 45 comments concerning the size standard for NAICS 541330, 24 fully supported the SBA’s proposal to increase that size standard from \$16.5 million to \$22.5 million. Commenters’ support for SBA’s proposal focused on four main arguments: (1) Increasing the size standard would allow existing small firms to retain their small business status for an extended period; (2) The proposed increase would allow firms to gain more experience before graduating from the size standard; (3) Increasing the size standard would increase the number of small firms and the number of small business set-aside opportunities; and (4) The proposed increase accurately reflects the changes to industry structure that have occurred since the last review of the size standard. SBA discusses these comments and its responses below.

*(1) Increasing the size standard would allow existing small firms to retain their small business status for an extended period.*

At least four commenters supported SBA’s proposal to increase the size standard for NAICS 541330 to \$22.5 million on the grounds that it would allow small firms to retain their small business status for a longer period. These commenters expressed the challenges of competing for contracts under full and open competition against firms many times greater than the size threshold for the industry, and thus, petitioned SBA to adopt the proposed increase so that small firms could retain access to SBA’s procurement programs for a longer period. Moreover, some commenters argued that lowering the size standard, and thus, shortening the period that firms could retain their small status, could harm the Federal government by reducing the pool of experienced and qualified small contractors eligible to help Federal agencies carry out their missions.

#### *SBA’s Response*

SBA agrees with commenters that its proposal to increase the size standard for NAICS 541330 from \$16.5 million to \$22.5 million will help small businesses in the industry, especially those near the size standard, to retain access to SBA’s procurement and financial assistance programs for a longer period. SBA believes that by expanding the

period for firms to qualify as small, a higher size standard will likely benefit the Federal government by increasing the number of qualified small businesses eligible for set-aside opportunities. Moreover, SBA also believes that the proposed increase will also benefit all small businesses in the industry as the Federal Government is likely to set aside more contracting opportunities for small businesses because of the availability of an expanded pool of experienced small firms.

*(2) The proposed increase would allow firms to gain more experience before graduating from the size standard.*

A few commenters in support of the proposed increase to the size standard for this industry stated that the proposed action would benefit existing small firms that are presently approaching the size standard by allowing them to gain more qualifications and capabilities before graduating from the size standard. These commenters expressed the importance of the expanded runway as it would allow existing small firms more time to develop their resume, which in turn, would help them compete with larger firms under full and open competition upon graduation from the small business status. Commenters also discussed the impact on small firms of Qualifications-Based Selections (QBS) requirements under the Brooks Act. These commenters expressed that the QBS criteria, established by the Brooks Act of 1972 (Pub. L. 92–582), tend to favor large firms with more qualifications because it requires selection based on qualifications alone, with the price negotiated only after the most qualified firm is selected. These commenters argued that increasing the size standard to \$22.5 million would allow existing small firms to obtain more project experience and expand the number of staff with specialized engineering expertise necessary to be more competitive with larger firms under the QBS environment. Other commenters expressed similar reasoning in their support for the SBA’s proposed increase to the size standard for NAICS 541330. For example, an engineering firm commented that the SBA’s proposal would foster robust competition in the Federal market by making it less onerous for firms to transition from small to the other-than-small status. One architectural firm commented that the current size limits are too small for firms to acquire qualifications and capabilities needed to compete for medium or large contracting opportunities and expressed

that the proposed higher size standard would help small businesses survive upon graduating from the size standard.

**SBA's Response**

SBA agrees with commenters that the proposed size standard would allow small firms to gain more qualifications and capabilities before graduating from the size standard. Due to this expanded runway provided by the higher proposed size standard, firms will be able to acquire more experience and technical capabilities to compete with larger firms upon their graduation from their small business status. SBA recognizes that the Brooks Act is an important factor affecting the competition in the Federal marketplace for this industry. SBA believes that, with the expanded runway provided by the proposed increase to the size standard, small firms will be able to gain more qualifications and experience and become more competitive for contracts covered under the Brooks Act.

*(3) Increasing the size standard would increase the number of small firms and the number of small business set-aside opportunities.*

Of the 24 comments in support of the proposed increase to the size standard for NAICS 541330, four comments expressed support based on the proposal's impact on set-aside opportunities. One commenter explained that SBA's proposal to increase the size standard for NAICS 541330 would increase the number of qualified small companies competing for contracts in this industry and provide the Government with a more robust selection of small businesses for its set-aside requirements. Another commenter expressed concerns about the potential consequences of not adopting the SBA's proposal and pointed to the current distribution of Federal contracts in this industry, which is dominated by a few large firms as a symptom that could be exacerbated by a failure to adopt the proposed increase to the size standard. Another commenter supported the SBA's proposal because it would allow more small businesses to win prime contracting opportunities. The commenter explained that allowing small businesses to grow to the size that can support agency needs as prime

contractors will allow agencies to set aside more contracts for small businesses.

**SBA's Response**

SBA agrees with commenters that the proposed increase to the size standard for NAICS 541330 will benefit both small businesses and the Federal Government. With an expanded pool of small businesses, the Federal Government will have access to more qualified small businesses to choose from, and as a result, will likely set aside more contracts for small businesses. SBA also agrees with commenters that robust competition within the industry will lead to more set-aside opportunities and that businesses will have a longer runway to gain experience to be able to better compete with large firms upon their graduation from the size standard. The proposed change would also enable some small businesses that have exceeded the current size standard to regain their small business status and qualify for SBA's contracting and financial assistance programs. SBA has quantified these impacts in the Regulatory Impact Analysis section of this final rule.

*(4) The proposed increase accurately reflects the changes to industry structure that have occurred since the last comprehensive review of the size standard.*

SBA received six comments in support of the proposed size standard expressing that the proposed higher size threshold better reflects the existing industry and current market conditions. Specifically, commenters argued that increasing the size standard for NAICS 541330 to \$22.5 million is reflective of increasing the number and size of large firms since the last review of that size standard which likely led to increases in the values of industry factors, such as the weighted average firm size and the Gini coefficient used to calculate the size standard. Other commenters expressed support for a higher size standard for this industry based on the Federal contracting data showing increasing average contract sizes. Finally, one commenter stated that they supported the SBA's proposed increase based on the resiliency of the industry during the COVID-19 induced

economic recession. This commenter further explained that they support the proposed increase to the size standards for all industries that have not been adversely impacted by the COVID-19 pandemic because small firms in these industries need to achieve a certain size and level of experience to earn set-aside opportunities. The commenter reasoned that an increase in the size standard is warranted in this industry to support small business growth and promote competition.

**SBA's Response**

SBA agrees with commenters that the SBA's proposed increase to the size standard for NAICS 541330 better reflects the current economic characteristics of the firms within this industry. SBA also agrees with commenters that industry consolidation and the growth of large firms has the potential to increase the calculated factors for weighted average receipts and the Gini coefficient. As detailed in Table 4 of the November 2020 proposed rule, the size standards supported by the factors for this industry already reflect an industry whose receipts distribution is significantly concentrated at the top. As such, SBA believes that the proposed size standard for this industry accurately reflects the industry structure and economic characteristics of its participant firms. SBA also agrees with the comment regarding the resiliency of engineering services firms during the COVID-19 related economic crisis. Data from FPDS-NG shows that there was an increase in dollars obligated to small businesses in this industry during fiscal years 2018-2020, which suggests that small firms have continued to do well in the Federal marketplace while providing valuable services to the Federal Government during the COVID-19 pandemic. Table 3, Dollars Obligated to Small Businesses in NAICS 541330, shows the dollars obligated to small businesses under NAICS 541330 and the annual growth rate during fiscal years 2018-2020. SBA believes that adopting the proposed \$22.5 million size standard will support the resiliency of small businesses in this industry by likely increasing the number of set-aside opportunities available and better directing SBA's resources to their intended beneficiaries.

**TABLE 3—DOLLARS OBLIGATED TO SMALL BUSINESSES IN NAICS 541330**

Fiscal year	Dollars obligated to small businesses (\$ million)	Annual growth rate (%)
2018 .....	8,460	

TABLE 3—DOLLARS OBLIGATED TO SMALL BUSINESSES IN NAICS 541330—Continued

Fiscal year	Dollars obligated to small businesses (\$ million)	Annual growth rate (%)
2019 .....	9,417	11.3
2020 .....	9,923	5.4

**Comments Opposing the Proposed \$22.5 Million Size Standard**

Commenters opposed to the SBA’s proposal included individuals, engineering firms, and trade associations. Of the 45 comments received regarding the SBA’s proposal to increase the size standard for NAICS 541330 from \$16.5 million to \$22.5 million, SBA received six comments that were totally opposed to the proposed size standard increase. These commenters argued that increasing the size standard beyond the current level would harm smaller small firms.

Of the 45 comments regarding the SBA’s proposed size standard increase for NAICS 541330, six comments were opposed to any increase to the size standard. Of these six comments, four supported the current \$16.5 million size standard and one recommended that the size standard be lowered instead of increasing it. These commenters expressed concerns that SBA’s proposed size standard would harm truly small firms by increasing the number of larger small firms competing for set aside opportunities. One engineering firm with average annual revenues below \$6 million expressed that competing against firms with \$20 million in average annual receipts and an employee count of 100 or more people would be difficult for smaller small firms because larger firms have experience and resources that smaller small firms do not have. The commenter urged SBA to maintain the current size standard or consider a micro entity category for this NAICS code. Another commenter with 40 employees expressed that although they may be considered a larger small engineering firm, they support maintaining the size threshold at the current level to ensure that smaller small firms continue to benefit from SBA’s contracting programs. Commenters to this issue did not provide any data in support of their position.

**SBA’s Response**

SBA’s proposed increase to the size standard for Engineering Services may result in some redistributions of Federal contracts between the newly qualified small businesses and large businesses

and between the newly qualified small businesses and small businesses under the current size standard. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the proposed increases to the size standard, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the proposed increase to the size standard. However, this impact may be offset by a greater number of procurements being set aside for all small businesses. SBA analyzed data from the 2012 Economic Census special tabulation and determined that SBA’s proposed size standard would increase the total number of small firms in the industry by only 344 firms, or 0.8% of the 44,074 firms that are currently small. Thus, SBA believes that an increase in firms of the magnitude described above will not significantly disadvantage currently small firms. Moreover, SBA analyzed internal data on 7(a) and 504 loans for fiscal years 2018–2020 and determined that 95.2% of loans were issued to firms one-sixth the size of the employee equivalent of the proposed size standard for this industry, indicating that the majority of firms receiving SBA’s financial assistance are much smaller than the current and proposed size standard. Thus, SBA does not anticipate that increasing the size standard to the proposed \$22.5 million level will impact the ability of small firms to participate in SBA’s financial assistance programs.

**Comments Recommending a Higher \$39.5 Million Size Standard**

Of the 45 comments relating to the SBA’s proposed increase of the Engineering Services size standard to \$22.5 million, 12 commenters maintained that SBA’s proposal to increase the size standard is a step in the right direction, but the proposed increase is not enough to address the challenges small businesses currently face in the Federal market. They petitioned SBA to raise the size standard for NAICS 541330 further to at least \$39.5 million, to match the current and proposed \$39.5 million size standard for NAICS 236220 (Commercial and Institutional Building Construction). Support for a higher size standard than what SBA proposed focused on four main arguments: (1) The Brooks Act qualifies as a unique characteristic in NAICS 541330 and should be considered for adjusting the size standard to a higher level of \$39.5 million; (2) The concentration of Federal contracting dollars among the largest firms makes it difficult for small firms to compete upon graduating from the current size standard; (3) Increasing use of limited competition acquisition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWAC), and Best-In-Class (BIC) contract vehicles favors large businesses; and (4) Increasing the size standard significantly will allow the Government to set aside more requirements for small businesses. SBA discusses the concerns raised by these commenters and its responses, below.

*(1) The Brooks Act qualifies as a unique characteristic in the 541330 industry and should be considered for adjusting the size standard to a higher value of at least \$39.5 million.*

Twelve commenters in favor of a higher size standard for NAICS 541330 recommended that SBA raise the size standard to \$39.5 million based on the unique characteristic in the industry created by the Brooks Act. The commenters maintained that the Brooks Act establishes a qualifications-based selection (QBS) process, in which architectural and engineering (A&E) services contracts are negotiated solely

on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. One comment submitted on behalf of a group of 12 engineering firms expressed that to be competitive in an environment where the Brooks Act is predominantly used in the acquisition process, the A&E firms must compete solely based on capabilities, which can be directly tied to the number of professionals a firm has and past projects that the firm has successfully completed. Thus, the commenters recommended that SBA should consider the Brooks Act as an additional factor for adjusting the size standard to a higher value to help small firms overcome the bias towards larger firms for contracts subject to the Brooks Act requirement. Along with their comments, the group provided a white paper which included the data showing the dollars obligated to NAICS 541330 relative to other industries, total contract awards by vendor, market concentration of prime contracts, and the distribution of contracts by types and vehicles. Another engineering firm, which expressed agreement with the comments submitted by the group of 12 engineering firms expressed that a size standard of \$39.5 million is necessary and proper to establish an environment where small businesses can compete, grow, and successfully transition to other-than-small status.

#### SBA's Response

SBA appreciates the informed comments submitted by commenters to this issue. SBA has reviewed the data provided by the commenters and determined that the data largely agrees with data that SBA evaluated in determining the proposed size standard for this industry. However, although the data provided to SBA are sufficient to demonstrate the concentration of Federal contracting dollars among a handful of large firms, the data does not demonstrate that SBA's current or proposed size standard for NAICS 541330 would have an adverse impact on the ability of small firms to compete for Federal contracting opportunities in that industry. Moreover, SBA does not agree with commenters' statements that the Brooks Act disadvantages small firms. They did not provide any empirical data supporting their arguments that the QBS process under the Brooks Act favors large businesses to the detriment of small businesses under the current or proposed size standard. SBA believes that the Brooks Act may have the opposite effect, increasing

opportunities for smaller firms by removing the emphasis on low price. This leads to increased opportunities for smaller firms that may be able to better compete with larger firms on the grounds of their niche market expertise, knowledge of local rules and regulations, and greater involvement of experienced and specialized staff. SBA's analysis of the Federal contracting factor for this industry supports this conclusion.

As detailed in Table 4 of the November 2020 proposed rule, the size standards associated with the weighted average firm size and the Gini coefficient factors already reflect an industry in which receipts are significantly concentrated at the top of the size distribution. However, regarding the Federal contracting factor, SBA found that, under the current \$16.5 million size standard, the small business share of Federal contracting dollars in this industry was greater than the small business share of total industry receipts. Thus, based on its methodology for evaluating size standards and the latest data, SBA determines that the current size standard of \$16.5 million is appropriate with respect to the Federal contracting factor. SBA believes that increasing the size standard to the proposed \$22.5 million level based on the analysis of all factors may increase the number of set-asides in this industry and further benefit the small firms that are already well-represented in the Federal contracting market at the current size standard. As such, SBA does not believe that it would be appropriate to increase the size standard for this industry based solely on the requirements of the Brooks Act because the latest data does not show that small firms are significantly disadvantaged as a result of the requirements of this law.

*(2) The concentration of Federal contracting dollars among the largest firms makes it difficult for small firms to compete upon graduating from the current size standard.*

At least eight commenters recommended a higher \$39.5 million size standard for NAICS 541330 based on the belief that both the current and proposed size standard levels would disadvantage graduating small firms (larger small firms) that would be competing with much larger firms under full and open competition. The commenters added that a firm graduating from the current or proposed size standard cannot be competitive in the full and open marketplace. They maintained that almost 50% of total

contract dollars in NAICS 541330 in DOD and more than 70% of the same at NASA and DOT went to the top 10 businesses. The commenters argued that the Brooks Act has caused this industry to be dominated by 10 large firms, making it nearly impossible for small businesses to compete for Federal opportunities upon graduation from the size standard. The comments maintained that that a larger increase to the size standard is warranted to ensure that small firms are able to gain the experience and capabilities necessary to successfully compete with larger firms upon graduation from small business status.

#### SBA's Response

In response to the comments, SBA analyzed the data from FPDS-NG for fiscal years 2018-2020 to determine the range of Federal contracting opportunities available to firms above the current or proposed size standard. SBA's analysis showed that 18.6% of the total dollars obligated to NAICS 541330 went to firms below the proposed \$22.5 million size standard and 25.2% of the total dollars obligated to that industry went to firms below the commenters' suggested size standard of \$39.5 million. Moreover, the data shows that there is not a disproportionate share of Federal contracting opportunities available to firms that have exceeded the size standard as compared to their share of total industry receipts. For example, based on the FPDS-NG data for fiscal years 2018-2020, SBA determined that 9.5% of the average annual total dollars obligated to NAICS 541330 went to firms above the current \$16.5 million size standard but below the \$39.5 million size standard suggested by commenters. Using the special tabulation of the 2012 Economic Census, SBA estimated that 7.9% of total industry receipts in NAICS 541330 was accounted for by firms above the current \$16.5 million size standard but below the \$39.5 million size standard suggested by commenters. Thus, based on SBA's methodology for evaluating a size standard for the Federal contracting factor, SBA finds that there are adequate Federal contracting opportunities for firms that have recently graduated from the size standard because the share of Federal contracting dollars to firms in that size range is proportionate to their respective share of industry receipts. Table 3, Distribution of Contracting Dollars and Industry Receipts by Firm Size in NAICS 541330, summarizes these results.

TABLE 3—DISTRIBUTION OF CONTRACTING DOLLARS AND INDUSTRY RECEIPTS BY FIRM SIZE IN NAICS 541330

Firm size in receipts (\$ million)	Average total dollars obligated (FPDS–NG) (\$ million)	Share of total dollars obligated (%)	Industry receipts (2012 economic census) (\$ million)	Share of total industry receipts (%)
<= \$16.5 .....	5,527	15.70	50,570	24.30
>\$16.5 and <= \$22.5 .....	1,022	2.90	5,886	2.80
>\$22.5 and <= \$39.5 .....	2,334	6.60	10,584	5.10
>\$39.5 .....	26,377	74.8	141,083	67.8
Total .....	35,260	100.0	208,124	100.0

Based on the above results, SBA does not agree with commenters that a deviation from the calculated size standard is necessary to ensure that small firms are able to compete once they graduate from the size standard. Moreover, SBA believes that increasing the size standard to \$22.5 million will extend the runway for small firms to grow and increase their ability to compete for larger contracts while also maintaining a fair and competitive playing field for the 96.8% of firms in this industry that are small at the proposed \$22.5 million size standard.

(3) *Increasing use of limited competition acquisition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWAC), and Best-In-Class (BIC) contract vehicles favors large businesses.*

Almost all in the group of commenters recommending a higher \$39.5 million size standard argued that the increased use of limited competition vehicles, such as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWACs), and Best-in-Class (BIC) contracts, by Federal agencies increases the number of opportunities for large Federal contractors to the detriment of small businesses. The commenters maintained that over 70% of the total spend in NAICS 541330 goes through limited competition vehicles, such as IDIQ, GWAC, and BIC vehicles. The commenter added that small businesses graduating from the current size standard cannot be competitive in full and open IDIQ contracts and that the proposed \$6 million increase is not adequate to appropriately alleviate this issue, which is why a more significant size standard increase is necessary to allow firms to be successful in capturing IDIQ contracts.

#### SBA's Response

Consolidated buying strategies—such as relying on GWACs and BIC contracts—favor incumbent and

established government vendors, but SBA does not believe that those strategies unequivocally favor large businesses over small businesses. Authority from the Small Business Jobs Act of 2010 permits agencies to issue set-aside orders off of IDIQ contracts, and some court decisions have applied mandatory small-business preferences to those vehicles. Additionally, certain GWACs are available exclusively to small businesses. This includes vehicles that are either entirely set aside for SBA socioeconomic program participants or feature pools exclusively for SBA-certified firms. That said, when agencies consider these limited-competition vehicles, they must continue to prioritize small-business contracting ahead of consolidating their contracts. In its recent Memorandum No. M–22–03 on “Advancing Equity in Federal Procurement”, the Office of Management and Budget (OMB) emphasized that agencies must not use BIC contracts where doing so might threaten the agency’s small business goals or the growth of the small-business supplier base. OMB also reformed the Category Management program—of which GWACs all are a part of—to designate all socioeconomic small businesses as Tier 2. SBA believes that these measures may ameliorate some the challenges small businesses in NAICS 541330 face from increased use of IDIQs, GWACs and BICs.

(4) *Increasing size standard will significantly allow the Government to set aside more requirements for small businesses.*

The commenters stated that increasing the size standard to the \$39.5 million level will allow a significant number of businesses to qualify as small, thereby expanding a pool of qualified small businesses, which would, in turn, encourage the Government to set aside more contracts for small businesses. This will, as the commenters added, spur more competition amongst small businesses, which leads to the improvement in the quality of services being delivered to the

Government buyer. The commenters asserted that their proposed significant increase to the size standard would not negatively impact small businesses under the current size standard when competing for Federal opportunities.

#### SBA's Response

SBA agrees with the commenters' position that increasing the size standard to \$39.5 million would allow significant number of businesses above the current or SBA's proposed size standard to qualify as small and become eligible for Federal opportunities intended for small businesses. However, SBA is concerned that, by allowing significantly larger and more qualified and resourced companies above the current or proposed size standard to qualify as small, the commenters' proposed \$39.5 million size standard (which is almost 140% increase from the current \$16.5 million and more than 75% increase from the SBA's proposed \$22.5 million size standard) would likely negatively impact smaller small businesses when competing for Federal opportunities. The commenter argued that increasing the size standard will not hurt small businesses below the current size standard, but they did not provide any data or analysis supporting their argument.

The commenters recommended to increase the size standard for NAICS 541330 to not less than \$39.5 million, but they did not provide any specific industry data or analysis justifying why the size standard should be increased to that level, except for suggesting to make it at par with the size standard for NAICS 236220 (Commercial and Institutional Building Construction). The results of the SBA's analysis of the industry and Federal contracting factors, shown in Table 4 of the November 2020 proposed rule, supported a size standard of \$25.5 million for NAICS 236220, a decrease from the current \$39.5 million size standard. However, in accordance with its policy of not lowering any size standard in the current environment due to the COVID–

19 pandemic, SBA proposed to retain the current \$39.5 million for NAICS 236220.

Based on the 2012 Economic Census, 96.8% of all firms in NAICS 541330 would qualify as small under the SBA's proposed \$22.5 million size standard, which would provide an adequate and robust pool of qualified and competitive small businesses for the Government to choose from for their set-aside requirements. Increasing the size standard to the commenters' proposed \$39.5 million level would add another 400–500 firms as small in the Federal marketplace, thereby increasing competition for SBA's programs and resources which may hurt smaller small businesses under the current size standard. For these reasons, SBA is not adopting the \$39.5 million as the size standard for NAICS 541330.

#### Comments Raising Other Issues

SBA received several comments raising other issues on its proposal to increase the size standard for NAICS 651330 from \$16.5 million to \$22.5 million. These commenters recommended that SBA establish a common size standard between Engineering Services and other related industries, offered recommendations and submitted questions regarding SBA's analysis of the engineering size standard. SBA discusses these comments and its responses below.

(1) *SBA should establish a common size standard between Engineering Services and other related industries.*

Nine commenters to the proposed rule suggested that SBA establish a common size standard between Engineering Services and other related industries, namely NAICS 541310 (Architectural Services) and NAICS 236220 (Commercial and Institutional Building Construction). Similarly, SBA received a comment from a group of 12 engineering firms, requesting that SBA increase the size standard for NAICS 541330 to at least \$39.5 million to match the size standard for NAICS 236220. Another commenter, an architect and engineering firm, recommended aligning the size standard for Engineering Services with the size standard for Architectural Services, arguing that these two NAICS codes are intertwined and in effect one and the same industry. This commenter explained that contracting officers may sometimes misclassify contracts due to the similarities and interdependence between the two NAICS codes. Thus, a common size standard would help to eliminate any disparities that may result from an incorrect selection of the NAICS code. The commenter also pointed to

the difference in the amounts of dollars obligated between NAICS 541310 and NAICS 541330 as evidence of the incorrect classification of A&E contracts, arguing that the more widespread use of NAICS 541330 with a larger size standard was responsible for that difference.

#### SBA's Response

SBA does not agree with commenters that the size standard for engineering services should be aligned with the size standards for industries that seem to perform related activities. Although the firms in engineering and architectural services industries may perform co-dependent and related business activities, SBA's analysis of these industries, as detailed in Table 4 of the November 20 proposed rule, demonstrates that their industry structures and the economic characteristics of the respective firms are markedly different, thereby justifying a unique size standard for each industry. For example, engineering firms are significantly larger than architectural firms based on simple and weighted average firm size (engineering firms are roughly three times larger based on the simple average firm size and 25 times larger based on the weighted average firm size). Engineering firms have three times as many average assets and a more top-heavy industry concentration in terms of both receipts and Federal contract dollars. Likewise, the Commercial and Institutional Building Construction industry is also significantly different from Engineering Services industry, particularly with respect to weighted average firm size and industry concentration of Federal contract dollars. Thus, SBA believes that creating a common size standard between Engineering and Architectural Services and between Engineering Services and Commercial and Institutional Building Construction would be inconsistent with differences in industry factors used in evaluating the size standards in those industries.

It is ultimately the responsibility of the contracting officer to designate the proper NAICS code based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). SBA does not believe that the size standard is an appropriate tool to address the issue of an incorrect NAICS code selection in a solicitation. SBA has established a process for interested parties to appeal with SBA's Office of Hearings and Appeal (OHA) a contracting officer's NAICS code designation in its regulations at 13 CFR 121.1101. SBA encourages impacted firms to use this process when they

believe that a contracting officer has categorized a solicitation under an improper NAICS code.

As part of the first five-year review of size standards under the 2010 Jobs Act, SBA proposed a common \$19 million size standard for all industries within NAICS Industry Group 5413 (Architectural, Engineering, and Related Services), including NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) (76 FR 14323 March 6, 2011)). A vast majority of comments concerning the proposed size standard for NAICS 541310 opposed the establishment of the common size standard between Architectural and Engineering Services industries on the grounds that architectural firms are, on average, much smaller than their engineering counterparts and that the common size standard would hurt the smaller small architectural firms in competing for Federal contracting opportunities. A detailed discussion of these comments can be found in the SBA's final rule (77 FR 7489 (February 10, 2012)).

For the above reasons, SBA is maintaining separate size standards for NAICS 541310, 541330, and 236220, as proposed. Specifically, in this final rule, SBA is adopting the proposed \$11 million size standard for NAICS 541310 (Architectural Services) and the proposed \$22.5 million size standard for NAICS 541330 (Engineering Services). Similarly, in a separate rulemaking (85 FR 62372 (October 2, 2020)), SBA proposed to retain the current \$39.5 million size standard for NAICS 236220, which SBA adopted in the corresponding final rule (RIN 3245–AG90).

(2) *Recommendations and questions regarding SBA's analysis of the size standard for NAICS 541330.*

Ten commenters raised questions or offered other recommendations regarding SBA's analysis of size standard for NAICS 541330 (Engineering Services). One engineering trade association representing more than 5,500 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide recommended that SBA create additional size standards (in addition to the existing four) under NAICS 541330 to account for the wide spectrum of engineering disciplines (such as civil, electrical, mechanical, environmental, structural, etc.) and services offered by this industry. The association asserted that it is critical to understand the differences between engineering services related to physical infrastructure projects (such as buildings, wells, dams, mines, canals,

and roads, etc.) and other engineering activities related to the design, development, and utilization of machines, materials, instruments, processes, and systems. The association further explained that in order to establish a meaningful size standard for the Brooks Act covered engineering industry involved with physical infrastructure projects for Government and public works entities, the sector's data needs to be separated from the manufacturing and management firms and separate size standards be developed. It expressed concerns over the use of combined data gathered from disparate sectors of the engineering services industries and recommended that SBA obtain sufficient information from the Department of Commerce to overcome the issues it raised and propose appropriate size standards for the Brooks Act covered Engineering Services segment and the rest of the industry.

Another commenter questioned why SBA proposed to increase the size standard for the general NAICS 541330 industry but decrease the size standard for its Military and Aerospace Equipment and Military Weapons exception. The commenter inquired whether SBA's analysis showed similar pressures on the parameters that impact size standards for the general engineering industry and the exception, and it suggested that the pressures are generally the same between the industries. The commenter requested that SBA provide a more detailed explanation of how the proposed size standards for these industries were determined.

Finally, eight commenters suggested that SBA increase the size standard for this industry to at least \$25 million based on SBA's 2011 proposal to increase the size standard for industries in the NAICS Industry Group 5413 to \$19 million (76 FR 14323 (March 16, 2011)) and inflation since then. The commenters argued that adjusting the proposed \$19 million size standard from 2011 to present day at an annual inflation rate of 3% would suggest that the revised size standard for NAICS 541330 should be at least \$25 million.

#### SBA's Response

In response to the comment that SBA should create additional size standard exceptions under NAICS 541330 to better reflect the differing characteristics and specializations of engineering firms, SBA surveyed the alternative data sources available from the U.S. Census Bureau and determined that the available data was not sufficient to conduct a size standard analysis for the

different segments of the engineering industry as suggested by the commenter. As explained in the proposed rule, SBA's primary source of industry data for evaluating industry characteristics and developing size standards is a special tabulation of the latest Economic Census from the Census Bureau. The data from the special tabulations are limited to the 6-digit NAICS industry level, and hence, do not provide separate data to evaluate a size standard at the subindustry level. SBA was not able to find other sources of data detailed enough to accurately capture the economic characteristics and industry composition of engineering firms. To account for different services and specializations that engineering firms provide, SBA has already established three subindustries (or exceptions) under NAICS 541330, in addition to the size standard for the general engineering industry.

The Economic Census is the most comprehensive industry data source that provides information across all industries under its scope, using uniform definitions and measures that allow for consistent industry comparisons at the same moment in time. Because the firm size distribution does not change drastically from one Economic Census to the next, the data retains its usefulness even if it is not produced in a recent year. SBA recently received a preliminary tabulation based on 2017 Economic Census. Comparing with the newer data, SBA found that the industry structure for NAICS 541330 has not drastically changed from the 2012 data. For example, SBA found that based on the 2012 Economic Census, 3% of firms earned receipts more than \$25 million, accounting for 71.8% of total industry receipts. Based on the 2017 preliminary tabulation, 3.5% of firms earned receipts more than \$25 million, accounting for 70.8% of total industry receipts.

In response to the comment questioning the SBA's rationale for increasing the size standard for the general NAICS 541330 industry but decreasing the size standard for one of the exceptions to that NAICS code, namely the Military and Aerospace Equipment and Military Weapons exception, SBA would like to clarify that while the calculated size standard for this exception was \$39 million, a decrease from the current size standard, SBA proposed to retain the current \$41.5 million size standard. In view of the effects of the COVID-19 pandemic on small businesses and Federal Government efforts to provide relief to small businesses and the overall economy, SBA proposed to maintain the

current size standards for all industries where the analytical results suggested decreases and to increase the size standards for all industries where analytical results suggested increases. Although firms in the general NAICS 541330 industry and those in the exceptions may perform related business activities, SBA's analyses of the industry and exception, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that their industry structures and the economic characteristics of the firms are markedly different. Regarding the exception specifically, the calculated size standard was lower than the current and proposed size standard due to a lower size standard supported by the four-firm ratio which decreased the average of all size standards supported by all factors for this industry exception from \$41.5 million to \$39 million. Similarly, for the general NAICS 541330, the four-firm ratio supported a size standard of only \$12 million, the smallest of all size standards supported by any factor for this industry. As such, SBA's analysis shows that some of the same pressures do exist for the portion of work covered under the exception as in the general industry.

In response to comments that the size standard for this industry should be raised to at least \$25 million based on inflation and SBA's 2011 proposal to increase the size standard to \$19 million, SBA reviewed the recent history of changes to size standards for NAICS 541330 and found that the size standard for this industry has been adjusted appropriately since 2011. As stated by the commenters, in a March 2011 proposed rule, SBA proposed to establish a \$19 million size standard for this industry (76 FR 14323 (March 16, 2011)). However, in a final rule issued in February 2012, SBA adopted a lower size standard of \$14 million in response to public comments (77 FR 7489 (February 10, 2012)). Since proposing the \$19 million size standard in 2011, SBA has issued two inflation adjustments to its monetary-based size standards, of which both applied to the size standard for this industry as well. Had SBA adopted the \$19 million size standard in 2012, the first inflation adjustment, effective in July 2014 and adopted in a final rule in 2016, would have increased the size standard to \$20.5 million (81 FR 3949 (January 25, 2016)). The second inflation adjustment effective in August 2019, would have further increased the \$20.5 million size standard to \$22 million (84 FR 34261 (July 18, 2019)). As such, SBA disagrees with commenters that the proposed size



standard found in the March 2011 proposed rule would justify a \$25 million size standard today based on inflation since then. SBA also disagrees with the merits of using the \$19 million size standard as a basis for inflation adjustment since SBA did not adopt the \$19 million size standard in its February 2012 final rule.

SBA also submitted a comment detailing a meeting that occurred between SBA and an engineering trade association regarding SBA's size standard methodology and its calculations involved in deriving the size standard for engineering services. The meeting occurred virtually on December 17, 2020 and was attended by the association's Size Standard Working Group, a senior economist from SBA's Office of Size Standards, and an attorney from SBA's Office of General Counsel. SBA representatives listened to the concerns of the association and addressed four questions the organization forwarded to SBA prior to the meeting on the topic of how the calculations of the proposed size standard for the Engineering Services industry were done. The association asked SBA to provide details on the weighting of primary factors under the SBA's size standard methodology, the impact of the COVID-19 pandemic on the review of size standards, and the status of the 2017 Economic Census special tabulation. Additionally, SBA representatives listened to other questions and concerns related to the current proposed rule, especially concerns related to the skewing of calculations due to possible misclassifications of large firms under NAICS 541330. In response to these questions, SBA explained the formulas used to calculate the proposed size standard, including the weighting of factors, using NAICS 541330 as an example. SBA also explained that in response to the economic impacts of the COVID-19 pandemic, SBA did not make adjustments to the size standard methodology itself, however, in the proposed rule, SBA proposed to maintain current size standards in all industries for which the analysis supported a decrease to size standards to ensure that small businesses would not lose access to SBA assistance during the pandemic. Regarding the status of the special tabulation of the 2017 Economic Census which SBA uses to evaluate size standards, SBA explained that the data were not yet available and thus, SBA is still using the 2012 Economic Census tabulation for the evaluation of size standards. Detailed meeting minutes, including SBA's

responses to the questions posed by the association, can be found as one of the comments to the proposed rule at [www.regulations.gov](http://www.regulations.gov).

#### Summary of the Discussion of Comments to NAICS 541330

Based on its analysis of industry data and the comments received, SBA is adopting the size standard of \$22.5 million for NAICS 541330, as proposed. SBA believes that the \$22.5 million is the appropriate size standard for this industry and will further benefit the small firms that are already well represented in the Federal marketplace at the current size standard by increasing the potential for more set-aside opportunities and expanding the runway to grow and become more competitive under full and open competition upon exceeding the size standard. A higher size standard will also provide the Government with access to better services through robust competition, while fostering growth of small businesses in this industry.

#### *Comments on Proposed Changes to NAICS 541611—Administrative Management and General Management Consulting Services & NAICS 541990—All Other Professional, Scientific and Technical Services*

SBA received two nearly identical comments to its proposal to increase the size standards for NAICS 541611 (Administrative Management and General Management Consulting Services) and NAICS 541990 (All Other Professional, Scientific and Technical Services) from \$16.5 million to \$21.5 million and \$17 million in average annual receipts, respectively. One of the comments was submitted on behalf of 12 organizations and the other comment was submitted on behalf of two organizations.

The commenters maintained that the proposed increases to size standards for these NAICS codes are not adequate. They recommended that the size standards for both industries should be increased to \$27.5 million, which will allow small businesses in those industries to successfully graduate from the small business programs. They stated that firms graduating at the current size standards do not have the financial resources and other capabilities to successfully compete against the most dominant firms. The commenters explained that Federal spending has trended towards consolidation of procurements, with agencies embracing GWACs and BIC vehicles, a policy that favors large businesses to the detriment of small businesses. Mid-sized or newly

graduated firms are not, and cannot be, competitive against the large firms when competing for GWACs or BICs or in the full and open marketplace. In order to be competitive with the largest firms in the full and open marketplace and on GWACs and BICs, as the comments explained, firms need to have significant financial capacity and other resources, none of which can be accomplished at the current or proposed size standards.

The commenters agreed with SBA's proposal to increase the size standards for these industries but argued that SBA should increase both size standards by a larger amount to \$27.5 million. The commenters expressed that a common size standard of \$27.5 million in those industries is necessary to prevent "NAICS shopping" by contracting officers who may sometimes take advantage of ambiguities in NAICS code definitions by choosing to classify a contract under a NAICS code based on their own individual preferences instead of selecting the NAICS code based on the primary purpose of the acquisition, as required by law. The commenters expressed that increasing the size standard in those industries would also increase the competitiveness of small firms participating in the Federal marketplace, specifically for opportunities with a place of performance Outside of the Continental United States (OCONUS). The commenters explained that small business set-asides in these industries are rare and full and open awards are dominated by the largest firms. The commenters noted that OCONUS contracts have continued to grow larger and larger, causing firms to prematurely outgrow their size standards, and this "early graduation" does not allow the newly graduated firm to be competitive in the full and open marketplace, which is dominated by the largest companies. The commenters expressed that less than 10% of OCONUS work is awarded to small businesses.

The commenters maintained that higher size standards will extend the runway for firms to expand their resources and build capacity in order to be more competitive upon graduation from the small business size status. To achieve Congress' intent to maximize small business participation in the Federal marketplace, a significantly higher size standard of \$27.5 million is needed for both NAICS 541611 and NAICS 541990, the comment added. Increasing the size standards substantially will increase the portfolio of firms that are available to the government buyer for set-aside opportunities. This will, the commenter

added, in turn increase competition, increase the number of set-asides, expand opportunities for all small firms, and provide better services to the Government.

In support of their positions, the commenters provided data showing OCONUS contract awards classified under NAICS 541611 and NAICS 541990, and the distribution of OCONUS contracts by type of contracts and agency.

#### SBA Response

Generally, SBA believes that it is not always appropriate to evaluate industries under a common size standard even when the business activities of the industries are similar or co-dependent. Section 3(a)(7) of the Small Business Act restricts the establishment of a common size standard beyond a grouping of industries at the four-digit NAICS level. Here, NAICS 541611 and NAICS 541990 belong to different four-digit NAICS industry groups and thus are ineligible for a common size standard. Specifically, NAICS 541611 belongs to NAICS Industry Group 5416 (Management, Scientific, and Technical Consulting Services) and NAICS 541990 falls under NAICS Industry Group 5419 (Other Professional, Scientific, and Technical Services). Moreover, in establishing or approving a common size standard for a grouping of 4-digit NAICS codes, the law requires SBA to make publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

Furthermore, SBA's analysis of industry factors often shows important distinctions between industries which, based on SBA's size standards methodology, may produce different size standards for industries, which seem to represent similar or related business activities. NAICS 541611 and NAICS 541990 exemplify this point well. Although there may be some overlap in the work performed under these industries, there are also significant differences between the two. For example, as shown in Table 4 of the November 2020 proposed rule, the weighted average firm size for NAICS 541611 is \$2.5 billion which supports a size standard of \$41.5 million, whereas the weighted average firm size for NAICS 541990 is only \$194 million which supports a size standard of \$14 million. Also, the Gini coefficient for NAICS 541611 is 0.824, which supports a size standard of \$33 million, whereas the Gini coefficient for NAICS 541990 is

0.784, which supports a size standard of \$26 million. The results of these factors alone show that these industries have differing economic characteristics; thus, SBA believes that it is appropriate to evaluate the size standards for these industries separately. Moreover, under the Small Business Act (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries.

SBA also reviewed the System for Award Management (SAM) data for fiscal year 2020 and found that only about 26% of firms registered under NAICS 541611 as the primary industry were registered under NAICS 541990 as one of their secondary NAICS codes. Similarly, only 23% of firms registered under NAICS 541990 as the primary industry were registered under NAICS 541611 as a secondary industry. Although these percentages demonstrate that there is some overlap between the two industries, they also show that most firms do not report participation in both industries. For the reasons detailed above, SBA does not agree with commenters that there should be a common size standard between these two industries.

SBA's regulations require contracting officers to designate the proper NAICS code for a solicitation based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). As stated previously, SBA's regulations in 13 CFR 121.1101 allow interested parties to appeal with the SBA's Office of Hearings and Appeal (OHA) a NAICS code designation made by a contracting officer. SBA encourages the impacted firms to follow the procedures outlined in the SBA's regulations when they believe that a contracting officer has categorized a solicitation under an improper NAICS code. As stated previously, the size standard is not an appropriate tool for addressing the issue of misclassifying a solicitation using an incorrect NAICS code.

In response to the comment that SBA should further increase the size standards for both NAICS 541611 and NAICS 541990 to help small businesses compete for OCONUS contract opportunities, SBA reviewed the data provided by the commenters and performed its own analysis of OCONUS awards to these industries using the FPDS-NG data for fiscal years 2018–2020. SBA found that, for NAICS 541611, the average annual total dollars obligated to firms through OCONUS

awards are not a substantial portion of the overall total dollars obligated to that industry, with only 6% of the \$11.8 billion in average annual total dollars being obligated to OCONUS awards. Similarly, for NAICS 541990, about 22% of the \$9.9 billion in average annual total dollars obligated were classified as OCONUS awards. SBA found that small businesses did not receive a large share of OCONUS awards under these industries. For example, only 22.5% of OCONUS awards in NAICS 541611 and only 9.3% of OCONUS awards in NAICS 541990 were awarded to small businesses. By comparing these results to the small business share of industry receipts for these industries, (35.8% for NAICS 541611 and 52.3% for NAICS 541990), SBA determined that small businesses are underrepresented in this particular segment (OCONUS contracts) of the Federal contracting market within these industries. This underrepresentation is also reflected in the broader contracting data in NAICS 541990, but not in NAICS 541611. For example, SBA calculated a Federal contracting factor of 4.8% for NAICS 541611 and –34.1% for NAICS 541990, which support the size standards of \$16.5 million and \$23.0 million, respectively. Thus, SBA agrees with commenters that based solely on the Federal contracting factor, a higher size standard is supported for NAICS 541990 compared to the SBA's proposed \$17 million size standard. However, SBA's "Size Standards Methodology" does not provide for the weighting of a specific factor more than others. In other words, the methodology establishes that SBA will give equal weight to all five primary factors that are considered in the evaluation of an industry size standard. Thus, SBA believes that the proposed size standards for these industries, which are based on SBA's evaluation of industry and Federal contracting factors, already reflect the commenters' concerns regarding the issue of a low small business participation in the Federal marketplace in these industries.

SBA agrees with commenters that increasing the size standards for these industries will extend the runway for small firms to grow and increase their ability to compete for larger contracts while also maintaining a fair and competitive playing field for firms that are small under the current size standards for these industries. Based on the 2012 Economic Census data, 98.4% of firms in NAICS 541611 and 98.6% of firms are already small under the current \$16.5 million size standard. At the proposed size standards of \$21.5

million for NAICS 541611 and \$17 million for NAICS 541990, those percentages increase to 98.7% and 98.9%, respectively. SBA is concerned that increasing these size standards further may hurt smaller small businesses when competing for Federal set-aside opportunities.

For the reasons presented above, SBA accepts the analytical results for these industries and is adopting the size standards of \$21.5 million for NAICS 541611 and of \$17 million for NAICS 541990, as proposed.

#### *Comments on Proposed Changes to NAICS 541810—Advertising Agencies*

SBA received one comment to its proposal to increase the size standard for NAICS 541810 (Advertising Agencies) from \$16.5 million to \$22.5 million. The comment, submitted on behalf of a coalition of advertising agencies, expressed support for the proposed increase to the size standard for this industry, but urged SBA to consider adopting a higher size standard between \$28.5 million and \$30 million based on increased demand for digital marketing services, which requires small firms to invest more heavily in information technology (IT) infrastructure and resources. The commenter explained that the increase in digital marketing services has transformed the industry and forced small advertising agencies to provide services outside of their primary area of expertise or resource bandwidths. The coalition maintained that the advertising industry is inequitably concentrated, with the top 4 advertising agencies or their networks accounting for more than 50% of Federal Government revenue in 2019, which supports a higher size standard for NAICS 541810. It also noted that advertising contracts are requiring increasingly sophisticated IT infrastructure, Customer Relations Management (CRM)/marketing automation platforms, IT storage and hosting, and greater cybersecurity and compliance services, all of which add significant costs beyond the financial capabilities of many small businesses under the current size standard. The coalition of firms further recommended that SBA consider other data sources in order to obtain a fuller and more accurate understanding of the economic characteristics of the industry and recommended that SBA increase the size standard for NAICS 541810 to match the SBA proposed size standards for NAICS 541830 (Media Buying Agencies—\$28.5 million), NAICS 541511 (Custom Computer Programming Services—\$30 million), and NAICS

541512 (Computer Systems Design Services—\$30 million) based on their relevance and similarities to Advertising Agencies. The commenter also contended that the 2012 Economic Census data, instead of the more recent and comprehensive industry data beyond the Economic Census, that SBA used in the proposed rule is outdated and does not accurately reflect the current structure of the advertising agencies industry. Finally, the coalition urged SBA to allow advertising agencies to exclude subcontractor costs from the calculation of receipts for the size standard. The coalition provided SBA with a copy of the executive summary of the Ad Age Datacenter Agency Report 2020 and data showing total advertising agency revenue by year and by firm size for the top 250 advertising agencies in the U.S.

#### *SBA's Response*

In response to the comment that the 2012 Economic Census data SBA used to develop the proposed size standard for NAICS 541810 (Advertising Agencies) are outdated and may not reflect the current industry structure and that SBA should use alternative data beyond the Economic Census data, SBA reviewed the data provided by the commenter. Due to the limited sample size, SBA determined that the data provided by the commenter are not comprehensive enough for evaluating this industry's size standard using the "SBA's Size Standards Methodology." Specifically, according to the Economic Census, there are more than 12,000 firms operating in the U.S. in NAICS 541810, as compared to about 400 firms in comment's Exhibit A and just 250 firms in its Exhibit C. Moreover, the Economic Census only includes the revenue data for the U.S. based companies; however, the data provided by the commenter appears to include the revenue data for the non-U.S. advertising companies as well. The data might have even included the companies for which advertising is not their primary activity. SBA surveyed other available industry data sources and determined that the special tabulation of the 2012 Economic Census was still the latest (when the November 2020 proposed rule was drafted) and most comprehensive data source available for evaluating all industries consistently and on the same terms. The Economic Census provides information across all industries under its scope, using uniform definitions and measures, which allow for consistent industry comparisons at the same moment in time. Because the firm size distribution does not change drastically from one

Economic Census to the next, the data retains its usefulness even if it is not produced in a recent year. SBA recently received a preliminary special tabulation based on the 2017 Economic Census. SBA found that the industry structure for NAICS 541810 has not drastically changed in the 2017 tabulation as compared to the 2012 tabulation. For example, SBA found that under the SBA's \$22.5 million proposed size standard for NAICS 541810, 98% of firms are classified as small based on the 2012 Economic Census tabulation, as compared to 97.3% of firms that would qualify as small under the proposed size standard based on the 2017 Economic Census data tabulation.

Moreover, as explained in the methodology section of the November 2020 proposed rule, SBA did not rely solely on 2012 Economic Census data to evaluate all industry factors. For example, SBA used the RMA data (<http://www.rmahq.org/estatement-studies/>) for fiscal years 2016–18 to determine the sales (receipts) to total assets ratio for an industry which is then used to calculate the "average assets" factor (proxy for start-up costs and entry barriers) by applying the ratio to the average receipts of firms in an industry. An industry with average assets that are significantly higher than most other industries is likely to have higher startup costs; this in turn will support a higher size standard. Conversely, an industry with average assets that are lower than most other industries is likely to have lower startup costs; this will support either lowering or maintaining the size standard. Regarding NAICS 541810, specifically, SBA used the recent data to calculate an average asset size of \$0.9 million which supported a size standard of \$11 million.

Similarly, SBA used FPDS-NG data from fiscal years 2016–2018 to evaluate the Federal contracting factor, which measures small business participation in the Federal market in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of an industry's total receipts. In general, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of total industry's receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with

respect to the Federal contracting factor. Regarding NAICS 541810, specifically, using the FPDS-NG data for fiscal years 2016–2018 (the latest available when the proposed rule was drafted), SBA calculated a Federal contracting factor of –20.8% which supported a size standard of \$20 million.

In response to the commenter’s suggestion that SBA should allow advertising agencies to exclude subcontractor costs (usually referred to as “pass-throughs”), SBA reviewed its current definition of receipts and its prior rulemakings where it has received similar comments on this issue. SBA found that this suggestion is not new, nor is it unique to NAICS 541810. SBA’s definition of receipts states the following: “Receipts means ‘total income’ (or in the case of a sole proprietorship, ‘gross income’) plus ‘cost of goods sold’ as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms . . . .” 13 CFR 121.104. The definition of receipts provides for several exclusions, including amounts collected for another by an advertising agent. 13 CFR 121.104(a). In calculating the revenue of an advertising agent, SBA excludes funds received in trust for an unaffiliated third party (such as bookings or sales subject to commissions), but includes the commissions received as revenue (see Footnote 10 to the SBA’s Table of Size Standards in 13 CFR 121.201). The exclusions do not apply to subcontracting, materials, or related costs. SBA recognizes that subcontracting and material costs can be more substantial for some businesses and industries than for others. The Economic Census data that SBA uses in its size standards analysis includes all sources of revenues received by companies, including the values of their subcontracts. If the agency excluded the value of “pass-throughs” or

subcontracting revenues from the calculation of receipts, SBA would have to adjust its methodology to establish a lower size standard to reflect the size of the industry without the subcontracting or “pass-through” costs.

Generally, SBA includes all revenues in its calculation of receipts—first, because Economic Census data includes them, as stated above, and second, because SBA’s existing definitions of receipts and employees provide a consistent approach to measuring business size for establishing eligibility for small business programs for all industries. If SBA were to exclude certain costs from revenue calculation for one or a few industries, the participants in other industries could raise the same issue. This would create a “slippery slope” leading toward widespread inconsistency in how businesses calculate their receipts to determine if they are small. The better solution would be to have higher size standards than otherwise supported by industry and Federal contracting factors for industries with high “pass-through” costs, so that the size standards reflect the realities of how such firms conduct their business. Again, SBA’s current definition of receipts is consistent with how businesses report their revenues for the Economic Census. The current definition is also consistent with the Small Business Act, which provides that size standards are to be established based on “ \* \* \* annual average gross receipts of the business concern . . . .” (15 U.S.C. 632(a)(2)(C)(ii)(II) [emphasis added]).

SBA also disagrees with the comment that SBA should establish a higher size standard for NAICS 541810 to match the proposed size standards for other industries, namely NAICS 541830 (Media Buying Agencies—\$28.5 million), NAICS 541511 (Custom Computer Programming Services—\$30 million), and NAICS 541512 (Computer

Systems Design Services—\$30 million). Although these industries may have related or co-dependent business activities with Advertising Agencies, SBA’s analysis of these industries, as detailed in Table 4 of the November 2020 proposed rule, demonstrates that their industry structures and the economic characteristics of the firms providing services under these industries are markedly different, justifying a unique size standard for each industry.

According to the NAICS manual, the Advertising Agencies industry comprises establishments primarily engaged in creating advertising campaigns and placing such advertising in periodicals, newspapers, radio and television, or other media. These establishments are organized to provide a full range of services (*i.e.*, through in-house capabilities or subcontracting), including advice, creative services, account management, production of advertising material, media planning, and buying (*i.e.*, placing advertising). NAICS 541511 and 541512, on the other hand, comprise of establishments primarily focused on planning and designing software and computer systems, and NAICS 541830 comprises establishments primarily engaged in purchasing advertising time or space from media outlets and reselling it to advertising agencies or individual companies directly. Among the three industries identified by the commenter as a basis for recommending a higher size standard of \$28.5 million or \$30 million for NAICS 541810, because of being in the same NAICS Industry Group 5418 (Advertising, Public Relations, and Related Services), NAICS 541830 is the closest to NAICS 541810. Yet, there are significant differences between the two industries, as shown in Table 5, Comparison of Primary Factors Between NAICS 541810 and NAICS 541830.

TABLE 5—COMPARISON OF PRIMARY FACTORS BETWEEN NAICS 541810 AND NAICS 541830

Primary factor/size standard	541810 Adverting agencies		541830 Media buying agencies	
	Factor	Size std.	Factor	Size std.
Simple average firm size (\$million) .....	\$2.9	\$16.0	\$8.4	\$38.5
Weighted average firm size (\$million) .....	896.3	37.0	283.3	17.0
Average assets size (\$million) .....	0.9	11.0	2.6	20.5
Four-firm ratio (%) .....	30.1%	25.5	35.7%	30.0
Gini coefficient .....	0.801	29.0	0.838	35.5
Federal contracting factor (%) .....	–20.8%	20.0	.....	.....
Calculated size standard (\$million) .....	.....	22.5	.....	28.5
Proposed size standard (\$million) .....	.....	22.5	.....	28.5
Current size standard (\$million) .....	.....	16.5	.....	16.5

As can be seen from Table 5, there are significant differences with respect to factor values and supported size standards between NAICS 541810 and NAICS 541830. For example, with a value of -20.8% the Federal contracting factor is significant for NAICS 541810 supporting a size standard of \$20 million, but it is not significant for NAICS 541830. With respect to industry factors, only the weighted average firm size supports a higher size standard for NAICS 541810. All other industry factors support higher size standards for NAICS 541830, producing a higher \$28.5 million calculated size standard for the industry, as compared to a \$22.5 million size standard for NAICS 541810. Thus, SBA believes that the differences in the primary business activity of the firms participating in each industry justifies maintaining a separate size standard for each of the aforementioned NAICS industries.

Therefore, for the reasons presented above, SBA accepts the analytical results and, in this final rule, and adopts the \$22.5 million size standard for NAICS 541810 (Advertising Agencies), as proposed. Based on the 2012 Economic Census tabulation, 98% of firms would qualify as small, thereby providing a robust pool of qualified small businesses for Federal set-aside opportunities.

#### *Comments on Proposed Changes to NAICS 541930—Translation and Interpretation Services*

SBA received a total of 24 comments concerning its proposal to increase the size standard for NAICS 541930 (Translation and Interpretation Services) from \$8 million to \$20 million in average annual receipts. Of the 24 comments received, 17 comments expressed support for the SBA's proposed increase, while seven comments opposed the increase. These comments and SBA's responses are discussed below.

#### *Comments Supporting the Proposed \$20 Million Size Standard*

Fourteen of the seventeen comments supporting SBA's proposal were nearly identical and cited rapid industry growth and increased competitiveness of small firms as the basis for their support for the SBA's proposed \$20 million size standard. These commenters, which comprised of individuals, companies, and a university, expressed that the SBA's proposed increase would match the rapid growth in the language industry, and would allow more companies to grow and stay competitive as small

businesses. Other commenters in support of the proposed increase expressed similar reasons for their support, citing increased demand for translation services in recent years and the increased capital requirements for translation services providers. For example, a firm providing sign language interpreting services expressed that the \$20 million size standard was appropriate because larger investments are needed by firms in the industry to meet the growing demands of technology, security provisions and other compliance standards required by customers.

One commenter noted that Federal contract values for language services continue to grow, and that the proposed increase to the size standard will increase set-aside opportunities for small businesses and ensure that the Federal Government has an adequate pool of small businesses to meet its growing needs for language and interpretation services. The same commenter also stated that increasing the size standard would also promote small business subcontracting by allowing small business subcontractors to remain small and continue to operate under prime contracts. One commenter mentioned that Government contracts have become larger and larger and a single contract can easily reach the size threshold.

#### *SBA's Response*

SBA agrees with the commenters that the higher \$20 million size standard reflects current market conditions in the language and interpretation services industry, will allow small businesses to grow remain small for an extended period, expand Federal opportunities for small businesses, and provide the Government with an expanded pool of qualified small businesses to meet their growing translation and interpretation services needs.

#### *Comments Opposing the Proposed \$20 Million Size Standard*

Commenters opposed to SBA's proposed increase to the size standard for NAICS 541930 included six language interpretation firms and one individual, of which six proposed to leave the size standard unchanged at \$8 million and one suggested lowering it to \$4 million. One commenter maintained that considering the unprecedented impact of the COVID-19 pandemic on small businesses, SBA should not be increasing the size standard in the current environment. All commenters opposed the proposed increase to the size standard over concerns that it would unfairly disadvantage the

population of currently small firms, especially the smallest of small firms. One commenter expressed that SBA's proposed size standard would lead to buyouts and mergers initiated by larger firms that would ultimately put small companies out of business. Another argued that a company with a \$20 million revenue does not need Government assistance. Three commenters suggested that SBA create multiple size classifications within the industry to identify and target resources towards firms that are "truly" small and ensure that very large businesses are not able to access resources intended for small businesses. One commenter recommended that SBA define the size classifications in this industry as follows: Below \$8 million as "small"; from \$8 million to \$20 million as "medium"; from \$20 million to \$100 million as "large"; and above \$100 million as "extra-large." Another commenter recommended that SBA adopt an employee-based size standard for this industry to provide a more even playing field but did not provide additional data or information to support this recommendation.

#### *SBA's Response*

Although SBA recognizes the challenges that both very small and mid-sized businesses face in the Federal market, SBA believes that suggested tiered size standards would add significant complexity to size standards, which many believe are already too complex. For the tiered size standards approach to work as envisioned by its proponents, small business contracting goals would need to be established at each tier to ensure that small businesses at different tiers have fair access to Federal small business contracts. Moreover, the Small Business Act gives SBA's Administrator the authority to determine what constitutes a small business concern for Federal Government programs, but the Act does not provide for definitions of other than small businesses. As such, SBA does not agree with commenters that it should create multiple size classifications within the industry. SBA also disagrees with the comment that number of employees is a better measure of business size than the level of receipts for this industry. The Small Business Act requires that the size of businesses in services industries be based on average annual gross receipts. Additionally, for industries where subcontracting is widespread, such as many professional services industries, including Translation and Interpretation Services, SBA is concerned that an employee-based size standard may

encourage businesses to excessively outsource Federal work to other businesses to remain within the size standard. Under the receipts-based size standard, businesses are not allowed to deduct value of work outsourced, and therefore cannot reduce their size by outsourcing a higher proportion of work.

Regarding commenters' concern that raising the size standard will disadvantage the smallest of small firms in this industry, SBA notes that increasing size standards does not necessarily put firms that are small under the current size standard at a competitive disadvantage. In fact, increasing size standards can have an opposite impact. With higher size standards and a larger pool of businesses qualifying as small, Federal agencies are likely to utilize more small business set-asides, thereby increasing opportunities for all small businesses. As stated above, most of the comments received to the proposed rule regarding the size standard for NAICS 541930 supported the proposed \$20 million size standard, contending, in part, that this increase will enable firms below that level to develop and become competitively viable. SBA agrees with these commenters that the proposed increase to size standard for NAICS 541930 will benefit all small businesses and better reflect the economic characteristics of the industry.

For the above reasons, SBA is adopting the \$20 million size standard for NAICS 541930, as proposed.

#### *Comments on Proposed Changes to All Sectors*

SBA received six comments to the proposed rule that did not discuss SBA's proposed changes to size standards for any particular industry or sector, but instead, focused on broader issues applicable to all sectors. Of the six comments received, four comments were opposed to SBA's proposed changes and two comments were in favor. Three commenters opposed to SBA's proposed changes expressed that the general levels of size standards are already too high. One opposing commenter suggested that a possible small business definition of 50 employees or less and receipts of \$1 million or less may be more appropriate. Another commenter expressed similar concerns and suggested that SBA create a micro small business designation.

Another commenter opposed SBA's proposed size standards based on the level of fraudulent activity that occurred during the execution of the Paycheck Protection Program (PPP). This commenter argued that SBA's resources should be used to curtail fraud in the PPP prior to developing a rule adjusting size standards. Comments in favor of SBA's proposed rule expressed that SBA's proposed size standards better reflected the current industry composition for the industries covered by this rulemaking. One commenter also supported proposed changes based on SBA's policy decision to not lower size standards at this time considering the impact from the COVID-19 induced economic recession.

#### *SBA's Response*

SBA does not agree with commenters that the general level of size standards is too high and that the maximum thresholds should be set at \$1 million or 50 employees. SBA's size standards methodology has established minimum and maximum limits for receipts-based and employee-based size standards (84 FR 14587 (April 11, 2019)). Prior to finalizing the methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the methodology. SBA considered all public comments in finalizing the revised methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification cited above. With respect to receipts-based size standards, SBA has established \$6 million and \$41.5 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in NAICS Subsectors 111 and 112 for which \$1 million and \$5 million are the minimum and maximum levels, respectively). Under this rule, SBA is not considering comments pertaining to its size standards methodology, which was already finalized through notice and comment process prior to this review. SBA also disagrees with the comment that SBA's resources should be wholly devoted to preventing abuse of PPP loans at the expense of completing the comprehensive review of size standards. As discussed earlier in this rule, in accordance with the Jobs Act, SBA is

mandated to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. SBA does not have the authority to suspend this requirement, nor does it believe that it would be in the public's best interest to suspend or terminate this review. SBA agrees with commenters that the size standards contained in the proposed rule better reflect the composition and economic characteristics of the underlying industries. SBA also agrees that its policy to not lower size standards at this time based on the analytical results is appropriate and reduces the level of uncertainty for small businesses as the wider economy continues to improve.

#### *Conclusion*

Based on the results of the analysis of industry and Federal contracting factors in Table 4 of the November 2020 proposed rule, evaluation of public comments to the proposed rule discussed above, and consideration of the impact of the COVID-19 pandemic on small businesses and Government response, in this final rule, SBA is adopting its proposal to increase 46 and retain 48 receipts-based size standards in Sectors 54, 55, and 56 without change.

#### **Summary of Adopted Revisions to Size Standards**

Based on the evaluation of public comments it received on the proposed rule and on the results of analyses of its industry and Federal contracting factors using the latest available data and considerations of the impact of the COVID-19 pandemic on small businesses and Government response, SBA is adopting the size standards as proposed in the November 2020 proposed rule. Thus, SBA is increasing the size standards for 46 industries in Sectors 54, 55, and 56, including 27 industries in NAICS Sector 54 (Professional, Scientific and Technical Services), 2 industries in Sector 55 (Management of Companies and Enterprises), and 17 industries in Sector 56 (Administrative and Support and Waste Management and Remediation Services). A summary of SBA's size standards revisions in this rule can be found below in Table 6, Summary of Size Standards Revisions in NAICS Sectors 54, 55, and 56.

TABLE 6—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 54, 55, AND 56

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
541110	Offices of Lawyers	12.0	13.5	13.5
541191	Title Abstract and Settlement Offices	12.0	17.0	17.0
541199	All Other Legal Services	12.0	18.0	18.0
541211	Offices of Certified Public Accountants	22.0	23.5	23.5
541213	Tax Preparation Services	22.0	12.0	22.0
541214	Payroll Services	22.0	34.5	34.5
541219	Other Accounting Services	22.0	17.5	22.0
541310	Architectural Services	8.0	11.0	11.0
541320	Landscape Architectural Services	8.0	6.5	8.0
541330	Engineering Services	16.5	22.5	22.5
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	41.50	39.00	41.50
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	41.50	39.00	41.50
541330 (Exception 3)	Marine Engineering and Naval Architecture	41.50	41.50	41.50
541340	Drafting Services	8.0	7.0	8.0
541350	Building Inspection Services	8.0	10.0	10.0
541360	Geophysical Surveying and Mapping Services	16.5	25.0	25.0
541370	Surveying and Mapping (except Geophysical) Services	16.5	14.0	16.5
541380	Testing Laboratories	16.5	16.5	16.5
541410	Interior Design Services	8.0	6.5	8.0
541420	Industrial Design Services	8.0	15.0	15.0
541430	Graphic Design Services	8.0	7.5	8.0
541490	Other Specialized Design Services	8.0	12.0	12.0
541511	Custom Computer Programming Services	30.0	20.5	30.0
541512	Computer Systems Design Services	30.0	27.0	30.0
541513	Computer Facilities Management Services	30.0	32.5	32.5
541519	Other Computer Related Services	30.0	21.0	30.0
541611	Administrative Management and General Management Consulting Services.	16.5	21.5	21.5
541612	Human Resources Consulting Services	16.5	25.5	25.5
541613	Marketing Consulting Services	16.5	14.5	16.5
541614	Process, Physical Distribution, and Logistics Consulting Services.	16.5	17.5	17.5
541618	Other Management Consulting Services	16.5	13.0	16.5
541620	Environmental Consulting Services	16.5	13.5	16.5
541690	Other Scientific and Technical Consulting Services	16.5	15.5	16.5
541720	Research and Development in the Social Sciences and Humanities.	22.0	24.5	24.5
541810	Advertising Agencies	16.5	22.5	22.5
541820	Public Relations Agencies	16.5	15.0	16.5
541830	Media Buying Agencies	16.5	28.5	28.5
541840	Media Representatives	16.5	18.5	18.5
541850	Outdoor Advertising	16.5	30.5	30.5
541860	Direct Mail Advertising	16.5	19.5	19.5
541870	Advertising Material Distribution Services	16.5	25.0	25.0
541890	Other Services Related to Advertising	16.5	16.0	16.5
541910	Marketing Research and Public Opinion Polling	16.5	20.0	20.0
541921	Photography Studios, Portrait	8.0	14.0	14.0
541922	Commercial Photography	8.0	8.0	8.0
541930	Translation and Interpretation Services	8.0	20.0	20.0
541940	Veterinary Services	8.0	9.0	9.0
541990	All Other Professional, Scientific and Technical Services	16.5	17.0	17.0
551111	Offices of Bank Holding Companies	22.0	34.0	34.0
551112	Offices of Other Holding Companies	22.0	40.0	40.0
561110	Office Administrative Services	8.0	11.0	11.0
561210	Facilities Support Services	41.5	32.5	41.5
561311	Employment Placement Agencies	30.0	21.0	30.0
561312	Executive Search Services	30.0	12.0	30.0
561320	Temporary Help Services	30.0	26.5	30.0
561330	Professional Employer Organizations	30.0	36.5	36.5
561410	Document Preparation Services	16.5	16.5	16.5
561421	Telephone Answering Services	16.5	14.5	16.5
561422	Telemarketing Bureaus and Other Contact Centers	16.5	22.5	22.5
561431	Private Mail Centers	16.5	8.5	16.5
561439	Other Business Service Centers (including Copy Shops)	16.5	23.5	23.5
561440	Collection Agencies	16.5	17.0	17.0
561450	Credit Bureaus	16.5	36.0	36.0
561491	Repossession Services	16.5	9.0	16.5
561492	Court Reporting and Stenotype Services	16.5	14.0	16.5
561499	All Other Business Support Services	16.5	19.0	19.0

TABLE 6—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTORS 54, 55, AND 56—Continued

NAICS code	NAICS U.S. industry title	Current size standard (\$ million)	Calculated size standard (\$ million)	Adopted size standard (\$ million)
561510	Travel Agencies	22.0	19.0	22.0
561520	Tour Operators	22.0	13.5	22.0
561591	Convention and Visitors Bureaus	22.0	13.5	22.0
561599	All Other Travel Arrangement and Reservation Services	22.0	28.5	28.5
561611	Investigation Services	22.0	21.5	22.0
561612	Security Guards and Patrol Services	22.0	25.5	25.5
561613	Armored Car Services	22.0	38.0	38.0
561621	Security Systems Services (except Locksmiths)	22.0	20.5	22.0
561622	Locksmiths	22.0	7.0	22.0
561710	Exterminating and Pest Control Services	12.0	15.5	15.5
561720	Janitorial Services	19.5	15.0	19.5
561730	Landscaping Services	8.0	8.5	8.5
561740	Carpet and Upholstery Cleaning Services	6.0	7.5	7.5
561790	Other Services to Buildings and Dwellings	8.0	8.0	8.0
561910	Packaging and Labeling Services	12.0	17.0	17.0
561920	Convention and Trade Show Organizers	12.0	17.5	17.5
561990	All Other Support Services	12.0	14.5	14.5
562111	Solid Waste Collection	41.5	34.0	41.5
562112	Hazardous Waste Collection	41.5	31.0	41.5
562119	Other Waste Collection	41.5	25.0	41.5
562211	Hazardous Waste Treatment and Disposal	41.5	39.0	41.5
562212	Solid Waste Landfill	41.5	39.0	41.5
562213	Solid Waste Combustors and Incinerators	41.5	41.0	41.5
562219	Other Nonhazardous Waste Treatment and Disposal	41.5	24.5	41.5
562910	Remediation Services	22.0	18.5	22.0
562920	Materials Recovery Facilities	22.0	21.5	22.0
562991	Septic Tank and Related Services	8.0	8.0	8.0
562998	All Other Miscellaneous Waste Management Services	8.0	14.5	14.5

Table 7, Summary of Revised Size Standards by Sector, summarizes the adopted changes to size standards by NAICS sector.

TABLE 7—SUMMARY OF REVISED SIZE STANDARDS BY SECTOR

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
54	Professional, Scientific and Technical Services	48	27	0	21
55	Management of Companies and Enterprises	2	2	0	0
56	Administrative and Support, Waste Management and Remediation Services.	44	17	0	27
All Sectors		94	46	0	48

**Evaluation of Dominance in Field of Operation**

SBA determined that for the industries evaluated under the under this final rule, no individual firm at or below the revised size standards would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, the small business share of total industry receipts among those industries would be, on average, 0.4%, varying from 0.005% to 4.8%. These market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

**Alternatives Considered**

In response to the unprecedented economic impacts of the COVID-19 pandemic on small businesses, SBA is adopting increases to size standards where the data suggests increases are warranted, and retaining all current size standards where the data suggested lowering or retaining is appropriate. Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 46 industries, decreasing them for 42 industries, and retaining them at their current levels for 6 industries.

Alternative Option Two was to retain all current size standards at their current levels.

SBA did not adopt Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. Lowering size standards in the current environment would run counter to various measures the Federal Government has implemented to help U.S. small businesses and the overall economy recover from the ongoing COVID-19 pandemic. Considering the impacts of the Great Recession and



Government actions that followed to support small businesses and the overall economy, SBA also adopted a similar policy of not decreasing size standards during the first five-year review of size standards, even though the data suggested decreases.

Under Alternative Option Two, given the current COVID-19 pandemic, SBA considered retaining all size standards at their current levels even though the analysis of relevant data suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two either because the results discussed in the Regulatory Impact Analysis section, below, shows that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 46 and retaining 48 size standards adopted in this final rule. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA's loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

**Compliance With Executive Orders 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A statement of the need for the regulatory action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of this regulatory action and the alternatives considered.

*Regulatory Impact Analysis*

1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA

establishes numerical size standards by industry to identify businesses that are deemed small.

Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or "size standards") and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in Federal marketplace.

The revisions to the existing size standards for 46 industries in NAICS Sectors 54, 55, and 56 are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries can access Federal small business programs that are designed to assist them to become competitive and create jobs.

2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best

assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.*, making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

*Changes to Size Standards*

Based on the results from the analysis of the latest industry and Federal contracting data, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID-19 emergency on small businesses and the overall economic activity, of the total of 94 industries in Sectors 54, 55, and 56 that have receipts-based size standards, SBA is adopting increases to size standards for 46 industries and maintaining current size standards for the remaining 48 industries (including exceptions).

*The Baseline*

For purposes of this regulatory action, the baseline represents maintaining the "status quo," *i.e.*, making no changes to the current size standards. Using the number of small businesses and levels of benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available), of a total of about 1,096,800 businesses in industries in Sectors 54, 55, and 56, 97.9% are considered small under the current size standards. That percentage varies from 65.3% in Sector 55 to 98.4% in Sector 54. Based on the data from FPDS-NG for fiscal years 2018–2020, about 36,685 unique firms in those industries received at least one Federal contract during that period, of which 80.1% were small under the current size standards. A total of \$154 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 33.9% of the dollars awarded went to small businesses. For these sectors, providing contract dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 71.9%

were awarded through various small business set-aside programs and 28.1% were awarded through non-set-aside contracts. Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis,

a total of 7,955 7(a) and 504 loans in that period, totaling about \$2.9 billion, of which 83.4% was issued through the 7(a) program and 16.6% was issued through the 504/CDC program. During fiscal years 2018–2020, small businesses in those industries also received 527

loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about \$23.8 million on an annual basis.<sup>2</sup> Table 8, Baseline for All Industries, below, provides these baseline results by sector.

TABLE 8—BASELINE FOR ALL INDUSTRIES

	Sector 54	Sector 55	Sector 56	Total
Baseline All Industries (current size standards) .....	48	2	44	94
Total firms (Economic Census) .....	760,701	7,544	328,522	1,096,767
Total small firms under current size standards (Economic Census) .....	748,170	4,926	320,672	1,073,769
Small firms as % of total firms .....	98.3%	65.3%	97.6%	97.9%
Total contract dollars (\$ million) (FPDS–NG FY2018–2020) .....	\$113,299	\$0.1	\$40,300	\$153,600
Total small business contract dollars under current standards (\$ million) (FPDS–NG FY2018–2020) .....	\$41,227	\$0.0	\$10,810	\$52,037
Small business dollars as % of total dollars (FPDS–NG FY2016–2020) .....	36.4%	1.1%	26.8%	33.9%
Total no. of unique firms getting contracts (FPDS–NG FY2018–2020) .....	25,173	3	13,887	36,685
Total no. of unique small firms getting small business contracts (FPDS–NG FY2018–2020) .....	19,476	1	11,479	29,374
Small business firms as % of total firms .....	77.4%	33.3%	82.7%	80.1%
No. of 7(a) and 504/CDC loans (FY 2018–2020) .....	5,120	43	2,792	7,955
Amount of 7(a) and 504 loans (\$ million) (FY 2018–2020) .....	\$1,979	\$30	\$871	\$2,881
No. of EIDL loans (FY 2018–2020) * .....	364	1	162	527
Amount of EIDL loans (\$ million) (FY 2018–2020) * .....	\$16.5	\$0.02	\$7.3	\$23.8

\* Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

**Increases to Size Standards**

As stated above, of 94 receipts-based size standards in Sectors 54, 55, and 56 reviewed, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and the considerations of the impact of the COVID–19 pandemic and public comments to the proposed rule, in this final rule, SBA is increasing the size standards for 46 industries and retaining the size standards for 48 industries. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards.

The results of regulatory impact analyses SBA provided in the October 2020 proposed rule were based on the FPDS–NG and SBA loan data for fiscal years 2016–2018. In this final rule, SBA is updating the impact analysis results by using the FPDS–NG and SBA loan data for fiscal years 2018–2020. Accordingly, there can be some differences between the proposed rule and this final rule with respect to impacts of size standards changes on Federal contracts and SBA loans.

**Benefits of Increasing Size Standards**

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining eligibility for a longer period. These include SBA's business loan programs, Economic Injury Disaster Loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/BD (Business Development) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are

available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

As shown in Table 9, Benefits of Increasing Size Standards, based on the 2012 Economic Census (latest available), SBA estimates that in 46 industries in NAICS Sectors 54, 55, and 56 for which it has decided to increase size standards, about 2,600 firms, not small under the current size standards, will become small under the revised size standards and therefore become eligible for above programs. That represents about 0.4% of all firms classified as small under the current size standards in industries for which SBA is increasing size standards. The revised size standards would result in an increase to the small business share of total receipts in those industries from 34.7% to 37%.

With more businesses qualifying as small under the higher size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current

<sup>2</sup> The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan

analysis here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data

limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS-NG data for fiscal years 2018-2020, SBA estimates that

about 463 firms that are active in Federal contracting in those industries would gain small business status under the revised size standards. Based on the same data, SBA estimates that those newly qualified small businesses under the increases to 46 size standards could

receive Federal small business contracts totaling about \$915 million annually. That represents a 4.1% increase to small business dollars from the baseline.

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 54	Sector 55	Sector 56	Total
No. of industries with increases to size standards .....	27	2	17	46
Total current small businesses in industries with Proposed increases to size standards (Economic Census 2012) .....	462,890	4,926	176,504	644,321
Additional firms qualifying as small under standards (2012 Economic Census) .....	1,345	527	710	2,582
% of additional firms qualifying as small relative to current small businesses in industries with increases to size standards .....	0.3%	10.7%	0.4%	0.4%
No. of current unique small firms getting small business contracts in industries with increases to size standards (FPDS-NG FY2018-2020) <sup>1</sup> .....	11,920	1	3,717	15,092
Additional small business firms getting small business status (FPDS-NG FY2018-2020) <sup>1</sup> .....	400		122	463
% increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS-NG FY2018-2020) .....	3.4%	0.0%	3.3%	3.1%
Total small business contract dollars under current standards in industries with increases to size standards (\$ million) (FPDS-NG FY2018-2020) ....	\$19,108	\$0.0	\$3,044	\$22,152
Estimated small business dollars available to newly-qualified small firms (Using avg dollars obligated to SBs) (\$ million) FPDS-NG FY 2018-2020) <sup>2</sup> .....	\$799	\$0.0	\$116	\$915
% increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards .....	4.2%	0.0%	3.8%	4.1%
Total no. of 7(a) and 504 loans to small business in industries with increases to size standards (FY 2018-2020) .....	2,982	43	1,446	4,471
Total amount of 7(a) and 504 loans to small businesses in industries with increases to size standards (\$ million) (FY 2018-2020) .....	\$1,302	\$30	\$436	\$1,769
Estimated no. of 7(a) and 504 loans to newly-qualified small firms .....	9	5	6	20
Estimated 7(a) and 504 loan amount to newly qualified small firms (\$ million) .....	\$3.9	\$3.5	\$1.8	\$9.3
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with increases to size standards .....	0.3%	11.6%	0.4%	0.5%
Total no. of EIDL loans to small businesses in industries with increases to size standards (FY 2018-2020) <sup>3</sup> .....	222	1	87	310
Total amount of EIDL loans to small businesses in industries with increases to size standards (\$ million) (FY 2018-2020) <sup>3</sup> .....	\$10.8	\$0.02	\$3.8	\$14.6
Estimated no. of EIDL loans to newly-qualified small firms <sup>3</sup> .....	1	1	1	3
Estimated EIDL loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	\$0.05	\$0.02	\$0.04	0.11
% increase to EIDL loan amount relative to the total amount of EIDL loans in industries with increases to size standards <sup>3</sup> .....	0.5%	100.0%	1.1%	0.8%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

The added competition from more businesses qualifying as small can result in lower prices to the Federal Government for procurements set-aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the higher size

standards, HUBZone firms might end up getting more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018-2020, SBA estimates up to about 20 SBA 7(a) and 504 loans totaling about \$9.3 million could be made to these newly-qualified small businesses in those industries under the revised size standards. That represents a 0.5% increase to the loan amount compared to the baseline (see Table 9).

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Because the benefits provided through this program are contingent on

the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL program data, SBA estimates that, on an annual basis, the newly defined small businesses under the increases of 46 size standards could receive three EIDL loans, totaling about \$0.11 million. Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact (see Table 9)

#### Costs of Increases to Size Standards

Besides having to register in *sam.gov* to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status because of increases to size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. This final rule does not establish the new size standards for the very first time; rather it modifies the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly qualified small businesses could become active in Federal procurement, the increases to size standards may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov*, more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD and mentor-protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies would set-aside more contracts for small businesses under the adopted increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number size

protests processed shows that the number of size protests decreased following the increases to receipts-based size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of FY 2013), as compared to about 500 during fiscal years 2018–2020 when increases to size standards were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the increases to size standards, Federal agencies may choose to set-aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the higher size standards. However, the additional costs associated with fewer bidders are expected to be minor because, by law, procurements may be set-aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the higher size standards, HUBZone firms might actually end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

#### Transfer Impacts of Increasing Size Standards

The increases to 46 size standards that are adopted in this final rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity because total Federal contract dollars available for businesses to compete for will not change with changes to size standards. Although SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the higher size standards, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set-aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the higher size standards. This impact may be offset by a greater number of procurements being set-aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

#### 3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the changes in the final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative, would be to adopt size standards based solely on the analytical results. In other words, the size standards of 46 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 42 industries for which the analytical results, as presented in Table 4 of the November 2020 proposed rule, suggest lowering them would be lowered. For the six remaining industries, size standards would be maintained at their current levels. Alternative Option Two would be to retain all size standards for all

industries, given the uncertainty generated by the ongoing COVID-19 pandemic. Below, SBA discusses and presents the net impacts of each option.

**Alternative Option One: Consider Adopting All Calculated Size Standards**

As discussed in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA’s financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID-19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year comprehensive size standards review as well.

The primary benefit of adopting Alternative Option One would include: (1) SBA’s procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical results; (2) Adopting size standards based on the analytical results would also promote consistency and predictability in SBA’s implementation of its authority to set or adjust size

standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set aside opportunities. Specifically, SBA sought public comment on the impact of adopting the size standards based on the analytical results.

As explained in the “Size Standards Methodology” white paper, in addition to adopting all results of the primary analysis, SBA evaluates other relevant factors as needed such as the impact of the reductions in or increases to size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We discussed already the benefits, costs, and transfer impacts of increasing 46 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 42 size standards.

**Benefits of Decreasing Size Standards Under Alternative Option One**

The most significant benefit to businesses from decreases to size standards when SBA’s analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA’s business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA’s business development programs, such as small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of calculated size standards diminishes the risk of awarding

contracts to firms that are not small anymore.

Decreasing size standards may reduce the administrative costs of the Federal Government, because the risk of awarding set-aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also diminish the risks of providing SBA’s loans to firms that do not need them the most. This may provide a better chance for smaller small firms to grow and benefit from the opportunities available on the Federal marketplace, and strengthen the small business industrial base for the Federal Government.

**Costs of Decreasing Size Standards Under Alternative Option One**

Table 10, Impacts of Decreasing Size Standards Under Alternative Option One, below, shows the various impacts of lowering size standards in 42 industries based solely on the analytical results. Based on the 2012 Economic Census, about 1,050 (0.3%) firms would lose their small business status under this option. Similarly, based on the FPDS-NG data for fiscal years 2018–2020, about 400 (2.5%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts.

With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, during fiscal years 2018–2020, agencies awarded, on an annual basis, about \$29.6 billion in small business contracts in those 42 industries for which SBA considered decreasing size standards.

**TABLE 10—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE**

	Sector 54	Sector 55	Sector 56	Total
No. of industries for which SBA considered decreasing size standards (2012 Economic Census) .....	18	0	24	42
Total current small businesses in industries for which SBA considered decreasing size standards (EC 2012) .....	276,751	0	125,106	401,857
Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) .....	676	0	375	1,051
% of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) .....	0.2%	0%	0.3%	0.3%
No. of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY 2018–2020) <sup>1</sup> .....	9,334	.....	7,526	16,242
Estimated number of small business firms that would have lost small business status in the decreases that SBA considered (FPDS-NG, FY2018–2020) <sup>1</sup> .....	306	0	138	407
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS-NG FY 2018–2020) .....	3.3%	0.0%	1.8%	2.5%

TABLE 10—IMPACTS OF DECREASING SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 54	Sector 55	Sector 56	Total
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (\$ million) (FPDS–NG FY 2018–2020) .....	\$21,980	\$0	\$7,631	\$29,611
Estimated small business dollars not available to firms losing small business status (Using avg dollars obligated to SBs) (\$ million) <sup>2</sup> (FPDS–NG FY 2018–2020) <sup>2</sup> .....	\$1,056	\$0	\$216	\$1,272
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) .....	4.8%	0.0%	2.8%	4.3%
Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) .....	2,053	.....	1,119	3,172
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) .....	\$639	\$0	\$357	\$996
Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status .....	6	0	4	10
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status (\$ million) .....	\$1.9	\$0.0	\$1.3	\$3.1
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards .....	0.3%	0.0%	0.4%	0.3%
Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) .....	134	0	65	199
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (\$ million) (FY 2018–2020) .....	\$5.2	\$0.0	\$3.2	\$8.5
Estimated no. of EIDL loans not available to firms that would have lost small business status .....	1	0	1	2
Estimated EIDL loan amount not available to firms that would have lost small business status (\$ million) .....	\$0.04	\$0.00	\$0.05	\$0.09
% decrease to EIDL loan amount relative to the baseline .....	0.7%	0.0%	1.5%	1.0%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer’s size designation.

<sup>3</sup> Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As shown in Table 10, lowering size standards in 42 industries would reduce Federal contract dollars awarded to small businesses by \$1.3 billion or about 4.3% relative to the baseline level.

Because of the importance of these sectors for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact under this option. SBA could adopt one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results, (2) Decrease size standards by a smaller amount than the calculated threshold, and (3) Retain the size standards at their current levels.

Nevertheless, because Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity are likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set-aside or reserved for small businesses, but

SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies’ small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 10, decreases to size standards would have a very minor impact on small businesses applying for SBA’s 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about ten of SBA’s 7(a) and 504 loans with total amounts of \$3.1 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). That represents about 0.3% decrease of the loan amounts compared to the baseline. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could

still qualify for SBA’s loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted by way of access to loans through the SBA’s EIDL loan program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. For example, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, two EIDL loans with total amounts of \$0.09 million could not be made to those small businesses that would lose eligibility under the reduced size standards (before mitigation). That represents about 1.0% decrease of the loan amounts compared to the baseline. Because this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a more meaningful estimate of this impact (see Table 10).

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced fees, less paperwork, and fewer

compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

Transfer Impacts of Decreasing Size Standards Under Alternative Option One

If the size standards were decreased under Alternative Option One, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the increases to size standards, it would have no impact on the overall economic activity because the total Federal contract dollars available for businesses to compete for will stay the same. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting

from decreases to size standards, it can identify several probable impacts.

With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses remaining small under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate

the impacts of the increases to size standards (see Table 9). However, under Alternative Option One, SBA used the calculated size standards instead of the revised ones to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 9. Table 10 and Table 11, Net Impacts of Size Standards Changes under Alternative Option One, present the impact of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option One, respectively.

Based on the 2012 Economic Census, SBA estimates that in 88 industries in NAICS Sectors 54, 55, and 56 for which the analytical results suggested to change size standards, about 1,530 firms (see Table 10), would become small under Alternative Option One. That represents about 0.1% of all firms classified as small under the current size standards. That is about 1,050 fewer firms qualifying as small under Alternative Option One, which represents a more than 40% reduction from about 2,585 firms that would qualify as small (see Table 8) under the proposal being adopted in this final rule (i.e., increasing 46 and retaining 48 size standards).

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 54	Sector 55	Sector 56	Total
No. of industries with changes to size standards .....	45	2	41	88
Total no. of small business under the current size standards (2012 Economic Census) .....	739,641	4,926	301,609	1,046,177
Additional firms qualifying as small under Alternative Option One (2012 Economic Census) .....	670	527	334	1,531
% of additional firms qualifying as small relative to total current small businesses .....	0.1%	10.7%	0.1%	0.1%
No. of current unique small firms getting small business contracts (FPDS-NG FY 2018-2020) <sup>1</sup> .....	18,820	1	10,612	27,922
Additional small firms getting small business status (FPDS-NG FY 2018-2020) <sup>1</sup> .....	16	0	-58	-75
% increase to small firms relative to current unique small firms getting small business contracts (FPDS-NG FY 2018-2020) .....	0.1%	0.0%	-0.5%	-0.3%
Total small business small business contract dollars under current size standards (\$ million) (FPDS-NG FY 2018-2020) .....	\$41,089	\$0	\$10,675	\$51,764
Estimated small business dollars available to newly-qualified small firms (\$ million) FPDS-NG FY 2018-2020) <sup>2</sup> .....	-\$256	\$0	-\$100	-\$357
% increase to dollars relative to total small business contract dollars under current size standards .....	-0.6%	0.0%	-0.9%	-0.7%
Total no. of 7(a) and 504 loans to small businesses (FY 2018-2020) .....	5,120	43	2,792	7,955
Total amount of 7(a) and 504 loans to small businesses (FY 2018-2020) ....	\$1,979	\$30	\$871	\$2,881
Estimated no. of additional 7(a) and 504 loans to newly-qualified small firms	3	5	2	10
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms (\$ million) .....	\$2.1	\$3.5	\$0.5	\$6.1
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses .....	0.1%	11.6%	0.1%	0.2%
Total no. of EIDL loans to small businesses (FY 2018-2020) <sup>3</sup> .....	364	1	162	527
Total amount of EIDL loans to small businesses (FY 2018-2020) <sup>3</sup> .....	\$16.5	\$0.02	\$7.3	\$23.8
Estimated no. of additional EIDL r loans to newly-qualified small firms <sup>3</sup> .....	0	1	0	1
Estimated additional EIDL r loan amount to newly-qualified small firms (\$ million) <sup>3</sup> .....	\$0.01	\$0.02	\$0.01	\$0.02

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 54	Sector 55	Sector 56	Total
% increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses <sup>3</sup> .....	0.1%	100.0%	0.2%	0.2%

<sup>1</sup> Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.

<sup>2</sup> Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.

<sup>3</sup> Excludes COVID-19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Based on the FPDS-NG data for fiscal years 2018–2020, SBA estimates that about 75 active firms in Federal contracting in those industries would lose small business status under Alternative Option One, most of them from Sector 56. This represents a decrease of about 0.3% of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about \$357.0 million of Federal procurement dollars would not be available to firms losing their small status. This represents a decrease of 0.7% from the baseline. A large amount of the losses are accounted for by Sector 54 (see Table 11).

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may increase by about ten loans, and the loan amounts by about \$6.1 million. This represents a 0.2% increase of the loan amounts relative to the baseline.

Firms' participation under the SBA's EIDL loan program will be affected as well. Because the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL loan data, SBA estimates that the total number of disaster loans may increase by about one loan, and the loan amount by about \$.02 million. This represents a 0.2% increase of the loan amounts relative to the group baseline.

**Alternative Option Two: Retaining All Current Size Standards**

Under this option, given the current COVID-19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.*, zero benefit and zero cost) for retaining all size

standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.*, access to set-aside contracts and capital) that become available to them under the option of increasing 46 and retaining 48 size standards adopted in this final rule. Moreover, retaining all size standards under Alternative Option Two would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small businesses from small business benefits.

*Congressional Review Act*

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Final Regulatory Flexibility Analysis*

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. This final rule, if adopted, may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses

seeking Federal contracts, loans under SBA's 7(a), 504 and Disaster Loan programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many of the industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2012 Economic Census, SBA estimates that there are about 1.05 million small firms covered by this rulemaking under industries with increases to size standards. As a result of this final rule, SBA estimates that an additional 1,530 businesses will be defined as small under the revised size standards.



3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The size standard changes in this final rule impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. Changes in small business size standards do not result in additional costs associated with SAM registration or certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to increasing 46 and maintaining 48 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 46 industries for which the analytical results suggest raising them would be raised. However, the size standards of 42 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in sectors 54 and 56 (see Table 9). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 46 and decreasing 42 size standards. Retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 46 and retaining the remaining 48 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses within those industries in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

#### *Executive Order 13563*

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is

consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every 5 years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for several industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in early 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a white paper entitled "Size Standards Methodology" and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document is available for public review and comments. The "Size Standards Methodology" white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this final rule. SBA received a total of 93 comments to the proposed rule from a wide range of entities including individuals, corporations, trade associations and an academic institution. In the Summary of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

#### *Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### *Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial,

direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—

business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table by revising the entries for “541110,” “541191,” “541199,” “541211,” “541214,” “541310,” “541330,” “541330 (Exception 1),” “541330

(Exception 2),” “541330 (Exception 3),” “541350,” “541360,” “541420,” “541490,” “541513,” “541611,” “541612,” “541614,” “541720,” “541810,” “541830,” “541840,” “541850,” “541860,” “541870,” “541910,” “541921,” “541930,” “541940,” “541990,” “551111,” “551112,” the Sector 56 heading, and the entries for “561110,” “561330,” “561422,” “561439,” “561440,” “561450,” “561499,” “561599,” “561612,” “561613,” “561710,” “561730,” “561740,” “561910,” “561920,” “561990,” and “562998” to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

**SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
<b>Sector 54—Professional, Scientific and Technical Services</b>			
<b>Subsector 541—Professional, Scientific and Technical Services</b>			
541110	Offices of Lawyers	\$13.5	
541191	Title Abstract and Settlement Offices	17.0	
541199	All Other Legal Services	18.0	
541211	Offices of Certified Public Accountants	23.5	
* * * * *			
541214	Payroll Services	34.5	
* * * * *			
541310	Architectural Services	11.0	
* * * * *			
541330	Engineering Services	22.5	
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	41.50	
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	41.50	
541330 (Exception 3)	Marine Engineering and Naval Architecture	41.50	
* * * * *			
541350	Building Inspection Services	10.0	
541360	Geophysical Surveying and Mapping Services	25.0	
* * * * *			
541420	Industrial Design Services	15.0	
* * * * *			
541490	Other Specialized Design Services	12.0	
* * * * *			
541513	Computer Facilities Management Services	32.5	
* * * * *			
541611	Administrative Management and General Management Consulting Services	21.5	
541612	Human Resources Consulting Services	25.5	
* * * * *			
541614	Process, Physical Distribution, and Logistics Consulting Services	17.5	
* * * * *			
541720	Research and Development in the Social Sciences and Humanities	24.5	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
541810	Advertising Agencies <sup>10</sup>	22.5	
*	*	*	*
541830	Media Buying Agencies	28.5	
541840	Media Representatives	18.5	
541850	Outdoor Advertising	30.5	
541860	Direct Mail Advertising	19.5	
541870	Advertising Material Distribution Services	25.0	
*	*	*	*
541910	Marketing Research and Public Opinion Polling	20.0	
541921	Photography Studios, Portrait	14.0	
*	*	*	*
541930	Translation and Interpretation Services	20.0	
541940	Veterinary Services	9.0	
541990	All Other Professional, Scientific and Technical Services	17.0	
<b>Sector 55—Management of Companies and Enterprises</b>			
<b>Subsector 551—Management of Companies and Enterprises</b>			
551111	Offices of Bank Holding Companies	34.0	
551112	Offices of Other Holding Companies	40.0	
<b>Sector 56—Administrative and Support and Waste Management and Remediation Services</b>			
<b>Subsector 561—Administrative and Support Services</b>			
561110	Office Administrative Services	11.0	
*	*	*	*
561330	Professional Employer Organizations	36.5	
*	*	*	*
561422	Telemarketing Bureaus and Other Contact Centers	22.5	
*	*	*	*
561439	Other Business Service Centers (including Copy Shops)	23.5	
561440	Collection Agencies	17.0	
561450	Credit Bureaus	36.0	
*	*	*	*
561499	All Other Business Support Services	19.0	
*	*	*	*
561599	All Other Travel Arrangement and Reservation Services	28.5	
*	*	*	*
561612	Security Guards and Patrol Services	25.5	
561613	Armored Car Services	38.0	
*	*	*	*
561710	Exterminating and Pest Control Services	15.5	
*	*	*	*
561730	Landscaping Services	8.5	
561740	Carpet and Upholstery Cleaning Services	7.5	
*	*	*	*
561910	Packaging and Labeling Services	17.0	
561920	Convention and Trade Show Organizers <sup>10</sup>	17.5	
561990	All Other Support Services	14.5	
<b>Subsector 562—Waste Management and Remediation Services</b>			
*	*	*	*
562998	All Other Miscellaneous Waste Management Services	14.5	
*	*	*	*

## Footnotes

<sup>10</sup> NAICS codes 488510 (excluding the exception), 531210, 541810, 561510, 561520 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

**Isabella Casillas Guzman,**  
Administrator.

[FR Doc. 2022-06611 Filed 3-30-22; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2022-0024; Project Identifier MCAI-2021-00994-R; Amendment 39-21999; AD 2022-07-11]

RIN 2120-AA64

#### Airworthiness Directives; Leonardo S.p.a. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2021-17-18, which applied to all Leonardo S.p.a. Model A109C, A109K2, A109E, A109S, and AW109SP helicopters. AD 2021-17-18 required an inspection of certain tail rotor (TR) sleeve assemblies for discrepancies, an inspection of certain TR shaft assemblies for discrepancies, a repetitive measurement of the position of the bushing of the TR sleeve assembly in relation to the pitch change slider assembly, and corrective actions if necessary. This AD retains the requirements of AD 2021-17-18, and also requires repetitive inspections of the TR sleeve assemblies, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that additional actions are required to address the unsafe condition. This AD was also prompted by a report of a crack on the TR mast. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective May 5, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 7, 2021 (86 FR 46766, August 20, 2021).

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet:

[www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0024.

#### Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0024; 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:** Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228-7330; email: [andrea.jimenez@faa.gov](mailto:andrea.jimenez@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0144, dated June 17, 2021 (EASA AD 2021-0144). (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Leonardo S.p.a. (formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A.) Model A109C, A109K2, A109E, A109S, and AW109SP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021-17-18, Amendment 39-21701 (86 FR 46766, August 20, 2021) (AD 2021-17-18). AD 2021-17-18 applied to all Leonardo S.p.a. Model A109C, A109K2, A109E, A109S, and AW109SP helicopters. The NPRM published in the **Federal Register** on February 3, 2022 (87 FR 6091). The NPRM was prompted by a

determination that additional actions are required to address the unsafe condition. The NPRM was also prompted by a report of a crack on the TR mast. The NPRM proposed to continue to require an inspection of certain TR sleeve assemblies for discrepancies, an inspection of certain TR shaft assemblies for discrepancies, a repetitive measurement of the position of the bushing of the TR sleeve assembly in relation to the pitch change slider assembly, and corrective actions if necessary, as specified in an EASA AD. The NPRM also proposed to require repetitive inspections of the TR sleeve assemblies, and corrective actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address cracking on the TR mast, which could lead to failure of the TR mast, with consequent loss of control of the helicopter. See the MCAI for additional background information.

#### Discussion of Final Airworthiness Directive

##### Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

##### Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

#### Related Service Information Under 14 CFR Part 51

This AD requires EASA AD 2021-0144, which the Director of the Federal Register approved for incorporation by reference as of September 7, 2021 (86 FR 46766, August 20, 2021). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Differences Between this AD and the MCAI**

Paragraph (1) of EASA AD 2021-0144 specifies the inspection must be done within 25 flight hours or 3 months, whichever occurs first. However, this AD requires the inspection to be done within 25 hours time-in-service after

September 7, 2021 (the effective date of AD 2021-17-18).

**Interim Action**

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop

final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

**Costs of Compliance**

The FAA estimates that this AD affects 133 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained Inspections/from AD 2021-17-18.	Up to 6 work-hours × \$85 per hour = \$510 per inspection/measurement cycle.	\$0	Up to \$510 per inspection/measurement cycle.	Up to \$67,830 per inspection/measurement cycle.
New Repetitive Inspections ....	Up to 1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	Up to \$85 per inspection cycle.	Up to \$11,305 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition actions (replacements, repairs, and

reporting) that would be required based on the results of any required actions. The FAA has no way of determining the

number of helicopters that might need these on-condition actions:

**ESTIMATED COSTS OF ON-CONDITION ACTIONS \***

Action	Labor cost	Parts cost	Cost per product
Retained Replacements .....	19 work-hours × \$85 per hour = \$1,615	\$88,760	Up to \$90,375.
Retained Reporting .....	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 on-condition repairs specified in this proposed AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120-0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101

Hillwood Pkwy., Fort Worth, TX 76177-1524.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–17–18, Amendment 39–21701 (86 FR 46766, August 20, 2021); and

■ b. Adding the following new AD:

**2022–07–11 Leonardo S.p.a.:** Amendment 39–21999; Docket No. FAA–2022–0024; Project Identifier MCAI–2021–00994–R.

**(a) Effective Date**

This airworthiness directive (AD) is effective May 5, 2022.

**(b) Affected ADs**

This AD replaces AD 2021–17–18, Amendment 39–21701 (86 FR 46766, August 20, 2021) (AD 2021–17–18).

**(c) Applicability**

This AD applies to all Leonardo S.p.a. Model A109C, A109K2, A109E, A109S, and AW109SP helicopters, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6400, Tail Rotor System.

**(e) Unsafe Condition**

This AD was prompted by a report of a crack on the tail rotor (TR) mast. The FAA is issuing this AD to address cracking on the TR mast, which could lead to failure of the TR mast, with consequent loss of control of the helicopter.

**(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 2021–0144, dated June 17, 2021 (EASA AD 2021–0144).

**(h) Exceptions to EASA AD 2021–0144**

(1) Where EASA AD 2021–0144 refers to its effective date, this AD requires using September 7, 2021 (the effective date of AD 2021–17–18).

(2) The “Remarks” section of EASA AD 2021–0144 does not apply to this AD.

(3) Where EASA AD 2021–0144 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where paragraph (1) of EASA AD 2021–0144 specifies a compliance time of 25 FH or 3 months, whichever occurs first, this AD requires compliance within 25 hours time-in-service after September 7, 2021 (the effective date of AD 2021–17–18).

(5) Where Note 1 of EASA AD 2021–0144 specifies a tolerance of 30 FH, this AD does not allow a tolerance.

(6) The initial compliance time for the inspection specified in paragraph (5) of EASA AD 2021–0144 is at the compliance time specified in paragraph (5) of EASA AD 2021–0144, or within 30 days after the

effective date of this AD, whichever occurs later.

(7) Where paragraph (6) of EASA AD 2021–0144 states the term “discrepancies,” for the purposes of this AD discrepancies include dents, corrosion, elongation, scratches, wear, excessive wear (web visible), fretting, or stepping.

(8) Where paragraph (7) of EASA AD 2021–0144 states the term “discrepancies,” for the purposes of this AD discrepancies include abnormal wear condition, corrosion, fretting, crack, or damage (including dents, elongation, scratches, or stepping).

(9) Where EASA AD 2021–0144 defines “serviceable part,” and that definition specifies instructions that are “approved under Leonardo Design Organization Approval (DOA) or by EASA,” for this AD, the repair must be accomplished using a method approved by the Manager, General Aviation and Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(10) Where Note 2 and paragraph (7) of EASA AD 2021–0144 specify instructions that are “approved under Leonardo DOA or by EASA,” for this AD, the repair must be accomplished using a method approved by the Manager, General Aviation and Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(11) Where the service information referenced in EASA AD 2021–0144 specifies to contact the manufacturer for corrective action, this AD requires the repair to be done in accordance with a method approved by the Manager, General Aviation and Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(12) Where the service information referenced in EASA AD 2021–0144 specifies to discard a certain part, this AD requires removing that part from service.

**(i) Special Flight Permit**

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the actions of this AD can be performed, provided no passengers are onboard.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the 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](mailto:9-AVS-AIR-730-AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

**(k) Related Information**

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (516) 228–7330; email: [andrea.jimenez@faa.gov](mailto:andrea.jimenez@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.

(3) The following service information was approved for IBR on September 7, 2021 (86 FR 46766, August 20, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0144, dated June 17, 2021.

(ii) [Reserved]

(4) For EASA AD 2021–0144, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); Internet: [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(5) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0024.

(6) 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](mailto:fr.inspection@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on March 24, 2022.

**Lance T. Gant,**

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

[FR Doc. 2022–06620 Filed 3–30–22; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1****Income Taxes****CFR Correction**

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual

revision of the Code of Federal Regulations.

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.641 to 1.850), revised as of April 1, 2021, in section 1.642(h)–2, revise paragraphs (a), (b), and (c) to read as follows:

**§ 1.642(h)–2 Excess deductions on termination of an estate or trust.**

(a) *Excess deductions*—(1) *In general.* If, on the termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) (relating to the personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income, the excess deductions as determined under paragraph (b) of this section are allowed under section 642(h)(2) as items of deduction to the beneficiaries succeeding to the property of the estate or trust.

(2) *Treatment by beneficiary.* A beneficiary may claim all or part of the amount of the deductions provided for in paragraph (a) of this section, as determined after application of paragraph (b) of this section, before, after, or together with the same character of deductions separately allowable to the beneficiary under the Internal Revenue Code for the beneficiary's taxable year during which the estate or trust terminated as provided in paragraph (c) of this section.

(b) *Character and amount of excess deductions*—(1) *Character.* The character and amount of the excess deductions on termination of an estate or trust will be determined as provided in this paragraph (b). Each deduction comprising the excess deductions under section 642(h)(2) retains, in the hands of the beneficiary, its character (specifically, as allowable in arriving at adjusted gross income, as a non-miscellaneous itemized deduction, or as a miscellaneous itemized deduction) while in the estate or trust. An item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Internal Revenue Code and must be separately stated if it could be so limited, as provided in the instructions to Form 1041, *U.S. Income Tax Return for Estates and Trusts*, and the Schedule K–1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credit, etc.*, or successor forms.

(2) *Amount.* The amount of the excess deductions in the final year is determined as follows:

(i) Each deduction directly attributable to a class of income is

allocated in accordance with the provisions in § 1.652(b)–(a);

(ii) To the extent of any remaining income after application of paragraph (b)(2)(i) of this section, deductions are allocated in accordance with the provisions in § 1.652(b)–3(b) and (d); and

(iii) Deductions remaining after the application of paragraph (b)(2)(i) and (ii) of this section comprise the excess deductions on termination of the estate or trust. These deductions are allocated to the beneficiaries succeeding to the property of the estate of or trust in accordance with § 1.642(h)–4.

(c) *Year of termination*—(1) *In general.* The deductions provided for in paragraph (a) of this section are allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year.

(2) *Example.* Assume that a trust distributes all its assets to B and terminates on December 31, Year X. As of that date, it has excess deductions of \$18,000, all characterized as allowable in arriving at adjusted gross income under section 67(e). B, who reports on the calendar year basis, could claim the \$18,000 as a deduction allowable in arriving at B's adjusted gross income for Year X. However, if the deduction (when added to other allowable deductions that B claims for the year) exceeds B's gross income, the excess may not be carried over to any year subsequent to Year X.

\* \* \* \* \*

[FR Doc. 2022–06880 Filed 3–30–22; 8:45 am]

BILLING CODE 0099–10–D

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**Income Taxes**

*CFR Correction*

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.641 to 1.850), revised as of April 1, 2021, make the following corrections:

■ 1. In section 1.817A–1, add paragraph (c) to read as follows:

**§ 1.817A–1 Certain modified guaranteed contracts.**

\* \* \* \* \*

(c) *Applicability dates.* Paragraph (b) of this section applies to taxable years beginning after *October 13, 2020*. However, a taxpayer may choose to apply the rules of paragraph (b) of this section for a taxable year beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115–97, and on or before *October 13, 2020*, provided the taxpayer consistently applies the rules of paragraph (b) of this section to that taxable year and all subsequent taxable years. See section 7805(b)(7). For taxable years beginning on or before *October 13, 2020*, see paragraph (b) of this section as contained in 26 CFR part 1 revised as of April 1, 2020.

\* \* \* \* \*

**1.818–2 [Amended]**

■ 2. In section 1.818–2, remove paragraph (c).

[FR Doc. 2022–06881 Filed 3–30–22; 8:45 am]

BILLING CODE 0099–10–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2022–0234]

RIN 1625–AA87

**Security Zone; San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for all navigable waters within a 200-yard radius of the U.S. Coast Guard Cutter (USCGC) KIMBALL while berthed at 10th Avenue Marine Terminal in San Diego, CA. The security zone is needed to protect the military vessel, personnel in and around the military vessel, navigable waterways, and waterfront facilities. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Diego.

**DATES:** This rule is effective from 7 a.m. until 8 p.m. on March 31, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2022–

0234 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619-278-7656, email [MarineEventsSD@uscg.mil](mailto:MarineEventsSD@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable based on the unpredictable nature of vessel operations and the fact that details of the port call were not finalized until March 24, 2022. This security zone is required to protect the military vessel, personnel in and around the military vessel, navigable waterways, and waterfront facilities while the vessel is docked at the 10th Avenue Marine Terminal. It is impracticable to publish an NPRM because we must establish this security zone by March 31, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the security zone is needed on March 31, 2022, to provide for the security of the military vessel, personnel in and around the military vessel, navigable waterways, and waterfront facilities while the vessel is docked at the 10th Avenue Marine Terminal.

**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 San Diego (COTP) has determined that the presence of the military vessel at this location presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of similar nature. This rule is needed to protect the military vessel, personnel in and around the military vessel, navigable waterways, and waterfront facilities while the vessel is docked at the 10th Avenue Marine Terminal.

**IV. Discussion of the Rule**

This rule establishes a security zone from 7 a.m. until 8 p.m. on March 31, 2022. The security zone will cover all navigable waters within a 200-yard radius around the USCGC KIMBALL while berthed at 10th Avenue Marine Terminal in San Diego, CA. The duration of the zone is intended to protect the military vessel, personnel in and around the military vessel, navigable waterways, and waterfront facilities while the vessel is docked at the 10th Avenue Marine Terminal. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

**V. Regulatory Analyses**

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

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and limited duration of the security zone. This zone impacts a small designated area of the San Diego Bay for a very limited period. Furthermore, vessel traffic can safely transit around the security 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 security zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 establishment of a security zone lasting only 13 hours on the navigable waters of San Diego Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–091 to read as follows:

#### § 165.T11–091 Security Zone; San Diego Bay; San Diego, CA.

(a) *Location.* The following area is a security zone: All waters of San Diego Bay, from surface to bottom, within a 200-yard radius of the U.S. Coast Guard Cutter KIMBALL while berthed at 10th Avenue Marine Terminal in San Diego, CA.

(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 Sector San Diego (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security 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 VHF Channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. until 8 p.m. on March 31, 2022.

Dated: March 25, 2022.

**T.J. Barelli,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

[FR Doc. 2022–06813 Filed 3–30–22; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2020–0522; FRL–9666–02–R3]

#### Air Plan Approval; Delaware; Amendments To Control of Volatile Organic Compounds Mobile Equipment Repair and Refinishing Rule Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This SIP revision consists of the 2010 amendments to the State of Delaware's Mobile Equipment Repair and Refinishing (MERR) regulations to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) model rule. The MVMERR rule establishes updated volatile organic compounds (VOC) content limits for coating and cleaning solvents used in vehicle refinishing and standards for coating application, work practices, monitoring, and recordkeeping. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on May 2, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0522. 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 through <https://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, 1650

Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5511. Mr. Silverman can also be reached via electronic mail at [silverman.sean@epa.gov](mailto:silverman.sean@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 8, 2021 (86 FR 8561), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a formal SIP Revision submitted on May 6, 2020 on behalf of the State of Delaware by DNREC.

Ozone is formed in the atmosphere by photochemical reactions between VOCs and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of certain VOC and NO<sub>x</sub> emission sources to achieve emission reductions in ozone nonattainment areas classified as Moderate and above. The 2002 MERR Model Rule was developed to reduce VOC emissions from automotive coatings and cleaning solvents associated with non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components. This rule was originally approved by EPA into Delaware's SIP on November 22, 2002 (67 FR 70315) as part of a regional effort to attain and maintain the 1-hour ozone national ambient air quality standards (NAAQS).

The OTC 2009 MVMERR Model Rule<sup>1</sup> is a revision of the 2002 MERR Model Rule developed by the OTC. The OTC's 2009 MVMERR Model Rule is based upon the California Air Resources Board's (CARB) Suggested Control Measure (SCM) for Automotive Coatings, published October 2005. In order to keep Delaware's regulations up to date with the OTC's 2009 MVMERR Model Rule, Delaware revised its regulations, found at 7 Del. Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 11.0 Mobile Equipment Repair and Refinishing (Delaware's 2010 amended MERR rule), on September 17, 2010. Delaware then submitted these 2010 amendments to EPA as a SIP revision on May 6, 2020.<sup>2</sup>

<sup>1</sup> The OTC 2009 MVMERR Model Rule is available online at <https://otcair.org/document.asp?fview=modelrules> and included in the docket for this rulemaking, available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2020-0522.

<sup>2</sup> During a recent internal review of the Delaware SIP, DNREC discovered that it had never submitted the 2010 Delaware regulatory changes adopting the 2009 OTC MVMERR Model Rule to EPA as a SIP revision. DNREC therefore submitted this SIP

##### II. Summary of SIP Revision and EPA Analysis

EPA has reviewed Delaware's May 6, 2020 MERR SIP submittal in the context of the requirements of CAA Sections 176a and 184 (interstate transport commissions and control of interstate ozone air pollution respectively). Delaware has amended 7 Del. Admin. Code 1124 Control of Volatile Organic Compound Emissions Section 11.0 Mobile Equipment Repair and Refinishing to meet these requirements in its May 6, 2020 MERR SIP submittal. In this action, EPA is determining that the submitted MERR SIP meets the above-cited requirements of the CAA.

Other specific requirements of Delaware's May 6, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM, and will not be restated here.

##### III. EPA's Response to Comments Received

EPA received five sets of comments in response to the NPRM that are available in the docket for this action. Of these five sets of comments, one was outside of the scope of this rulemaking, and another was supportive, neither of which require a response by EPA. EPA provides summaries of the three sets of significant adverse comments and our responses below.

*Comment 1:* One commenter claims that the DE MERR Rule should be disapproved due to rounding error that results from converting the regulatory VOC limits from pounds per gallon (lb/gal) to grams per liter (gm/l) and vice versa. The commenter uses the example that converting "5.5 pounds per gallon to grams per liter we get 659.045 grams per liter" and converting "660 grams per liter to pounds per gallon we get 5.50797 pounds per gallon." The commenter goes on to say "allowing these fractional amounts to be rounded off EPA is deceiving the public and allowing harmful VOC compounds to be emitted into the atmosphere. EPA can't allow duel [sic] limits in different units unless those units of measure are exactly equal."

*Response 1:* EPA does not agree that the SIP revision should be disapproved due to minor discrepancies that arise in table 11-1 which converts imperial units to metric units. The SIP revision explicitly defines the VOC Coating Regulatory content in equation 11-1 and states that units are in gm/l. Furthermore, certain EPA regulations also give limits in both imperial and metric units. Examples can be found in

revision in May 2020 so that the EPA-approved SIP would correctly reflect the Delaware regulations.

EPA's New Source Performance Standards (Standards of Performance for Electric Utility Steam Generating Units, 40 CFR part 60 subpart Da) and National Emissions Standards for Hazardous Air Pollutants (Surface Coating of Metal Furniture: National Emission Standards for Hazardous Air Pollutants, 40 CFR part 63 subpart RRRR). In these examples and in this SIP revision, these limits would be better conceived of as a limit defined by a range of possible compliant concentrations with any concentrations within the range (whether measured in imperial or SI units) representing compliance, rather than "duel [sic] limits." However, in all cases the limits in Delaware's MERR are more stringent than the corresponding limits in the current SIP. This SIP revision is therefore approvable because it increases the stringency of the Delaware SIP.

*Comment 2:* The commenter asserts that EPA cannot approve the DE MERR rule on grounds that it "has yet to approve previous fixes to the same rule which address impermissible Startup Shutdowns and Malfunctions as detailed in EPA's 2015 SIP call." The commenter asserts that "EPA must address the impermissible exceptions detailed in the SIP call for Rule 1124 before it adds new rules to the SIP otherwise these new rules can just be ignored in the same way. . . ."

*Response 2:* The commenter asserts that EPA must resolve issues relating to Startup, Shutdown, and Malfunction (SSM) as described in the 2015 SIP call (80 FR 33840, June 12, 2015) before it can modify regulations pertaining to Delaware's MERR. The commenter correctly notes that an SSM provision subject to the 2015 SIP call is contained in Title 7 of the Delaware Administrative Code, Regulation 1124 (Control of Volatile Organic Compound Emissions), Section 1.0 (General Provisions), subsection 1.4. 7 Del. Admin. Code Section 1124-1.4. This SSM subsection is not addressed in this rule. This rule pertains solely to revisions to Delaware Code section 11.0 (and its various subsections), and comprises SIP-strengthening changes to Delaware's rules that pertain to "Mobile Equipment Repair and Refinishing." Revisions to address the SSM provision in 7 Del. Admin. Code Section 1124-1.4 have been submitted to EPA and will be addressed in a separate action.

It is worth noting the commenter does not articulate any reason why EPA must address the SSM provision before EPA can act on this SIP revision beyond drawing an analogy to hypothetical traffic regulations, and EPA does not know of any policy or legal reason why

we need to await resolution of an SSM provision contained in a different subsection of the same regulatory chapter prior to taking action on these SIP-strengthening measures.

The updates to the MERR rule in 7 Del. Admin. Code Section 1124–11 contain no SSM provisions or changes relating to SSM. Nothing in 7 Del. Admin. Code Section 1124–11 was subject to the 2015 SIP call cited by the commenter. Furthermore, the approval of the MERR provisions in 7 Del. Admin. Code Section 1124–11 will be SIP strengthening independent of the outcome of action pertaining to 7 Del. Admin. Code Section 1124–1.4. The new SIP strengthening requirements Delaware added to section 11 include reduced VOC coating contents, specifications for the type of equipment that can be used for application techniques and the addition of requirements to document the manufacturer and VOC content of coatings. EPA believes that delaying the federal enforceability of these benefits through SIP approval of the MERR rule revisions will delay potential environmental benefits of having the strengthened provisions in the SIP. EPA therefore does not view this comment as a basis to alter the proposed action and is finalizing approval of the MERR as a revision to the Delaware SIP.

*Comment 3:* The commenter asserts EPA cannot approve this SIP because this regulation will increase the cost for businesses in Delaware resulting from “increased chemical use by some companies that are not located in Delaware, thereby driving up costs for Delaware businesses, which must bear the cost of treating the chemicals . . .” The commenter goes on to suggest that the resulting cost outweighs the benefits.

*Response 3:* EPA disagrees that the MERR SIP Revision should be disapproved based on the reasons given by the commenter. Although the commenter speculates that the SIP revision will result in “increased chemical use by some companies that are not located in Delaware, thereby driving up costs for Delaware businesses, which must bear the cost of treating the chemicals” the commenter does not offer any factual support or data to back up this assertion. Comments that are no more than broad assertions that an agency “got it wrong” do not provide a basis for EPA to change its decision. See, e.g., *International Fabricare Institute v. E.P.A.*, 972 F.2d 384 (D.C. Cir. 1992). Furthermore, this SIP revision in no way impacts treatment of materials, so the mechanism suggested by the commenter

for driving up costs is unrelated to the revisions as written. Therefore, EPA disagrees with the commenter that this comment provides a basis for disapproving this SIP Revision.

#### IV. Final Action

EPA is approving the 2010 amended MERR rule as a revision to the Delaware SIP. EPA has determined that Delaware’s 2010 amended MERR rule is consistent with the requirements and limits in the 2009 OTC MVMERR Model Rule. Therefore, its approval into the Delaware SIP would result in the VOC reductions in the 2010 amended MERR rule becoming federally enforceable and strengthen the SIP.

#### V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revisions to 7 Del. Admin. Code 1124 Control of Volatile Organic Compound Emissions Section 11.0 Mobile Equipment Repair and Refinishing described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>3</sup>

#### VI. Statutory and Executive Order Reviews

##### A. General Requirements

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

##### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

<sup>3</sup> 62 FR 27968 (May 22, 1997).

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to revisions to 7 Del. Admin. Code 1124 Control of Volatile Organic Compound Emissions Section 11.0 Mobile Equipment Repair and Refinishing may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 23, 2022.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

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

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart I—Delaware**

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry “Section 11.0” under “1124 Control of Volatile Organic Compound Emissions” to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>1124 Control of Volatile Organic Compound Emissions</b>				
Section 11.0 .....	Mobile Equipment Repair and Refinishing	10/11/2010	3/31/2022, [insert <b>Federal Register</b> citation].	
*	*	*	*	*

\* \* \* \* \*  
[FR Doc. 2022–06615 Filed 3–30–22; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA–R05–OAR–2020–0410; EPA–R05–OAR–2021–0141; FRL–9484–02–R5]

**Air Plan Approval; Wisconsin; Redesignation of the Manitowoc, Wisconsin, Area to Attainment of the 2015 Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) finds that the Manitowoc, Wisconsin, area is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and is approving, in accordance with a request from the Wisconsin Department of Natural Resources (WDNR), the redesignation of the area to attainment for the 2015 ozone NAAQS, because the

request meets the statutory requirements for redesignation under the Clean Air Act (CAA). Also, EPA is approving WDNR’s certification that its stationary annual emissions statement regulation, which has been previously approved by EPA under a prior ozone standard, satisfies the CAA emission statement rule requirement for the 2015 ozone standard. WDNR submitted these requests on August 3, 2020, and October 29, 2021. EPA is also approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State’s plan for maintaining the 2015 ozone NAAQS through 2033 in the Manitowoc area. EPA also finds adequate and is approving Wisconsin’s 2025 and 2033 volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) motor vehicle emission budgets for the Manitowoc area. These revisions satisfy the emissions inventory requirements for the partial Manitowoc area under the 2015 ozone NAAQS. The CAA requires emission inventories for all areas that were designated nonattainment.

**DATES:** This final rule is effective on March 31, 2022.

**ADDRESSES:** EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2020–0410 and EPA–R05–OAR–2021–0141. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Emily Crispell, Environmental Scientist, at (312) 353–8512 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Emily Crispell, Environmental Scientist,

Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8512, [crispell.emily@epa.gov](mailto:crispell.emily@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

### I. Background Information

On February 1, 2022 (87 FR 5438), EPA proposed to approve the 2015 Ozone NAAQS Redesignation and Maintenance Plan for the Manitowoc area, WDNR’s 2025 and 2033 VOC and NO<sub>x</sub> motor vehicle emission budgets for the Manitowoc area, WDNR’s emissions inventory for the partial Manitowoc area under the 2015 ozone NAAQS, and WDNR’s emissions statement certification for the 2015 ozone standard. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on March 3, 2022.

During the comment period, EPA received one comment. The comment was supportive of the proposed action and the commentor stated that environmental regulations are necessary and that the proposed regulation should go into effect. The comment received is included in the docket for this action. EPA did not receive any adverse comments. Therefore, we are finalizing our action as proposed.

### II. What action is EPA taking?

EPA finds that the Manitowoc area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2018–2020 showing that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Quality-assured and certified monitoring data for 2021 show that the area continues to attain the 2015 ozone NAAQS. EPA is thus approving a change in the legal designation of the Manitowoc area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also approving, as a revision to the Wisconsin SIP, the State’s maintenance plan for the area. The maintenance plan is designed to keep the Manitowoc area in attainment of the 2015 ozone NAAQS through 2033. EPA also finds adequate and is approving the newly established 2025 and 2033 VOC and NO<sub>x</sub> motor vehicle emission budgets for the Manitowoc area. EPA is also approving

the base year emissions inventories for the partial Manitowoc area under the 2015 ozone NAAQS. Finally, we are confirming that Wisconsin has acceptable and enforceable annual emission statement regulations for the 2015 ozone standard.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** “except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

### III. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
  - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action

is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 21, 2022.

**Debra Shore,**  
*Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

■ 2. Section 52.2585 is amended by adding paragraph (rr) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(rr) *Redesignation.* Approval—On October 29, 2021, Wisconsin submitted a request to redesignate the Manitowoc County area to attainment of the 2015 8-hour ozone standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a

subsequent maintenance plan revision in eight years as required by the Clean Air Act. The ozone maintenance plan also establishes 2025 and 2033 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2025 MVEBs for the Manitowoc County area are 0.47 tons per hot summer day for VOC and 0.91 tons per hot summer day for NO<sub>x</sub>. The 2033 MVEBs for the Manitowoc County area are 0.32 tons per hot summer day for VOC and 0.61 tons per hot summer day for NO<sub>x</sub>.

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.350 is amended by revising the entry for “Manitowoc County, WI” in the table entitled “Wisconsin–2015 8-Hour Ozone NAAQS [Primary and Secondary]” to read as follows:

**§ 81.350 Wisconsin.**

\* \* \* \* \*

**WISCONSIN—2015 8-HOUR OZONE NAAQS**  
[Primary and secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
* * * * *				
Manitowoc County, WI .....	3/31/2022	Attainment .....		Marginal (Rural Transport).
Manitowoc County (part): Inclusive and east of the following roadways with the boundary starting from north to south: County Road B which turns into South State Street to County Road V which turns into Forest Home Drive to South Packer Drive to West Hillcrest Road to Highway 43 to West Custer Street to Dufek Drive which turns into Highway 42.				
* * * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2022–06757 Filed 3–30–22; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 61, and 63**

[EPA-R09-OAR-2021-0962; FRL-9400-02-R9]

**Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona and California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and California.

**DATES:** This rule is effective on May 31, 2022 without further notice unless EPA receives adverse comments by May 2, 2022. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0962 at <https://www.regulations.gov>, or via email to [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

*Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, (415) 947-4152, [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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- I. Background
  - A. What is the purpose of this document?
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- II. EPA Action
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**I. Background**

*A. What is the purpose of this document?*

Through this document, the EPA is accomplishing the following objectives:

(1) Update the delegation tables in the Code of Federal Regulations, title 40 (40 CFR), parts 60, 61, and 63 to provide an accurate listing of the delegated New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); and

(2) Clarify those authorities that the EPA retains and are not granted to state or local agencies as part of NSPS or NESHAP delegation.

Update of Tables in the CFR

This action will update the delegation tables in 40 CFR parts 60, 61, and 63, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables will include the delegations approved in response to recent requests, as well as those previously granted. The tables are shown at the end of this document.

Recent requests for delegation that will be incorporated into the updated 40 CFR parts 60, 61, and 63 tables are identified below. Each individual submittal identifies the specific NSPS and NESHAP for which delegation was requested. The requests have already been approved by letter and simply need to be included in the CFR tables.

Agency	Date of request	Date of approval by letter
Maricopa County Air Quality Department .....	December 9, 2020 and November 9, 2021 .....	April 8, 2021 and December 22, 2021.
Pima County Department of Environmental Quality.	January 30, 2020 .....	April 21, 2020.
Antelope Valley Air Quality Management District.	November 3, 2020 .....	January 14, 2022.
Monterey Bay Air Resources District .....	April 23, 2021 .....	January 14, 2022.
San Diego Air Pollution Control District .....	June 23, 2020 .....	April 8, 2021.

*B. Who is authorized to delegate these authorities?*

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorizes the Administrator to delegate his or her authority for implementing and enforcing standards in 40 CFR parts 60, 61, and 63.

*C. What does delegation accomplish?*

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and

reports should be sent to the delegated state or local agency with a copy to EPA Region IX, as appropriate. Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR parts 60, 61, and 63, and the EPA’s test methods and continuous monitoring procedures.

*D. What authorities are not delegated by the EPA?*

In general, the EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant or alter the

stringency of the underlying standards. For a more detailed description of the authorities in 40 CFR parts 60 and 61 that are retained by the EPA, see 67 FR 20652 (April 26, 2002). For a more detailed description of the authorities in 40 CFR part 63 that are retained by the EPA, see 65 FR 55810 (September 14, 2000).

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Enforcement Division’s Air Section Manager a copy of any written decisions

made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- approvals or determination of construction, reconstruction, or modification;
- minor or intermediate site-specific changes to test methods or monitoring requirements; or
- site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), the EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

#### E. Does the EPA keep some authority?

The EPA retains independent authority to enforce the standards and regulations of 40 CFR parts 60, 61, and 63.

## II. EPA Action

This document serves to notify the public that the EPA is updating the 40 CFR parts 60, 61, and 63 tables for Arizona and California to codify recent delegations of NSPS and NESHAP as authorized under Sections 111(c)(1) and 112(1)(l) of the Clean Air Act.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve delegation requests that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(c) and 7412(l). Thus, in reviewing delegation submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

In addition, the delegation submissions are 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Parts 60, 61, and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 17, 2022.

**Elizabeth Adams,**

*Director, Air and Radiation Division, Region IX.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

- 1. The authority citation for part 60 is revised to read as follows:

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

### Subpart A—General Provisions

- 2. Section 60.4 is amended as follows:
  - a. In paragraph (d)(1), Table 3 to Paragraph (d)(1) is revised;
  - b. In paragraphs (d)(2)(i), (v), and (vii) the tables are revised.

The revisions read as follows:

#### § 60.4 Address.

*	*	*	*	*
(d)	*	*	*	
(1)	*	*	*	



TABLE 3 TO PARAGRAPH (d)(1)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial-Commercial-Institutional Steam Generating Units.	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X	X	X	X
Eb	Large Municipal Waste Combustors Constructed After September 20, 1994.	X	X	X	.....
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X	X	X	.....
F	Portland Cement Plants	X	.....	X	X
G	Nitric Acid Plants	X	X	X	X
Ga	Nitric Acid Plants For Which Construction, Reconstruction or Modification Commenced After October 14, 2011.	.....	X	X	.....
H	Sulfuric Acid Plant	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	.....	X	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	.....	.....	X	.....
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	.....	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	.....	X	X
Q	Primary Zinc Smelters	X	.....	X	X
R	Primary Lead Smelters	X	.....	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants.	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation and Processing Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft Pulp Mills	X	X	X	X
BBa	Kraft Pulp Mill Sources for which Construction, Reconstruction or Modification Commenced after May 23, 2013.	.....	X	X	.....
CC	Glass Manufacturing Plants	X	X	X	X

TABLE 3 TO PARAGRAPH (d)(1)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations.	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations.	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Industry Chemicals Manufacturing.	X	X	X	X
VVa	Equipment Leaks of VOC in the Synthetic Organic Industry for Which Construction, Reconstruction, or Chemicals Manufacturing Modification Commenced After November 7, 2006.	X	X	X	
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wood Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X	X
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	X		X	
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions	X	X	X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems.	X		X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X	X	X	
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	
XXX	Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014.		X	X	
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	X	X	X	

TABLE 3 TO PARAGRAPH (d)(1)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X	X	X	.....
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X	X	X	.....
GGGG	(Reserved)	.....	.....	.....	.....
HHHH	(Reserved)	.....	.....	.....	.....
IIII	Stationary Compression Ignition Internal Combustion Engines.	X	X	X	.....
JJJJ	Stationary Spark Ignition Internal Combustion Engines	.....	X	X	.....
KKKK	Stationary Combustion Turbines	X	X	X	.....
LLLL	New Sewage Sludge Incineration Units	.....	.....	X	.....
MMMM	Emissions Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.	X	.....	.....	.....
OOOO	Crude Oil and Natural Gas Production, Transmission, and Distribution.	.....	X	X	.....
OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015.	.....	X	X	.....
QQQQ	Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.	.....	X	X	.....
TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.	.....	X	X	.....

(2) \* \* \*

(i) \* \* \*

TABLE 4 TO PARAGRAPH (d)(2)(i)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY AQMD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley AQMD	Bay Area AQMD	Butte County AQMD
A	General Provisions	.....	X	.....	.....
Ba	Adoption and Submittal of State Plans for Designated Facilities.	.....	X	.....	.....
Cf	Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.	.....	X	.....	.....
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	.....	X	X	.....
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	.....	X	X	.....
Db	Industrial-Commercial-Institutional Steam Generating Units	.....	X	X	.....
Dc	Small Industrial-Commercial-Institutional Steam Generating Units.	.....	X	X	.....
E	Incinerators	.....	X	X	.....
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	.....	X	X	.....
Eb	Large Municipal Waste Combustors Constructed After September 20, 1994.	.....	X	.....	.....
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	.....	X	.....	.....
F	Portland Cement Plants	.....	X	X	.....
G	Nitric Acid Plants	.....	X	X	.....
Ga	Nitric Acid Plants For Which Construction, Reconstruction or Modification Commenced After October 14, 2011.	.....	X	.....	.....
H	Sulfuric Acid Plant	.....	X	X	.....
I	Hot Mix Asphalt Facilities	.....	X	X	.....
J	Petroleum Refineries	.....	X	X	.....
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	.....	X	.....	.....

TABLE 4 TO PARAGRAPH (d)(2)(i)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY AQMD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley AQMD	Bay Area AQMD	Butte County AQMD
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X	X	
L	Secondary Lead Smelters		X	X	
M	Secondary Brass and Bronze Production Plants		X	X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	X	
O	Sewage Treatment Plants		X	X	
P	Primary Copper Smelters		X	X	
Q	Primary Zinc Smelters		X	X	
R	Primary Lead Smelters		X	X	
S	Primary Aluminum Reduction Plants		X	X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.		X		
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.		X	X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.		X	X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants.		X	X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	X	
Y	Coal Preparation and Processing Plants		X	X	
Z	Ferroalloy Production Facilities		X	X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	X	
BB	Kraft Pulp Mills		X	X	
BBa	Kraft Pulp Mill Sources for which Construction, Reconstruction or Modification Commenced after May 23, 2013.		X		
CC	Glass Manufacturing Plants		X	X	
DD	Grain Elevators		X	X	
EE	Surface Coating of Metal Furniture		X	X	
FF	(Reserved)				
GG	Stationary Gas Turbines		X	X	
HH	Lime Manufacturing Plants		X	X	
KK	Lead-Acid Battery Manufacturing Plants		X	X	
LL	Metallic Mineral Processing Plants		X	X	
MM	Automobile and Light Duty Trucks Surface Coating Operations.		X	X	
NN	Phosphate Rock Plants		X	X	
PP	Ammonium Sulfate Manufacture		X	X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations.		X	X	
SS	Industrial Surface Coating: Large Appliances		X	X	
TT	Metal Coil Surface Coating		X	X	
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	X	
VV	Equipment Leaks of VOC in the Synthetic Organic Industry Chemicals Manufacturing.		X	X	
VVa	Equipment Leaks of VOC in the Synthetic Organic Industry for Which Construction, Reconstruction, or Chemicals Manufacturing Modification Commenced After November 7, 2006.		X		

TABLE 4 TO PARAGRAPH (d)(2)(i)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY AQMD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley AQMD	Bay Area AQMD	Butte County AQMD
WW	Beverage Can Surface Coating Industry		X	X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wood Heaters		X	X	
BBB	Rubber Tire Manufacturing Industry		X	X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X	X	
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	X	
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.		X		
HHH	Synthetic Fiber Production Facilities		X	X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X		
JJJ	Petroleum Dry Cleaners		X	X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X	X	
LLL	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions		X		
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	X	
OOO	Nonmetallic Mineral Processing Plants		X	X	
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems.		X		
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X		
SSS	Magnetic Tape Coating Facilities		X	X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	
UUU	Calciners and Dryers in Mineral Industries		X	X	
VVV	Polymeric Coating of Supporting Substrates Facilities		X	X	
WWW	Municipal Solid Waste Landfills		X		
XXX	Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014.		X		
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.		X		
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.		X		
DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units.		X		
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.		X		
GGGG	(Reserved)				
HHHH	(Reserved)				
IIII	Stationary Compression Ignition Internal Combustion Engines.		X		
JJJJ	Stationary Spark Ignition Internal Combustion Engines		X		
KKKK	Stationary Combustion Turbines		X		
LLLL	New Sewage Sludge Incineration Units		X		
MMMM	Emissions Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.		X		
OOOO	Crude Oil and Natural Gas Production, Transmission, and Distribution.		X		

TABLE 4 TO PARAGRAPH (d)(2)(i)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY AQMD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley AQMD	Bay Area AQMD	Butte County AQMD
OOOOa .....	Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015.	.....	X	.....	.....
TTTT .....	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.	.....	X	.....	.....
UUUUa .....	Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units.	.....	X	.....	.....

\* \* \* \* \* (v) \* \* \*

TABLE 7 TO PARAGRAPH (d)(2)(v)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY APCD, MOJAVE DESERT AQMD, MONTEREY BAY UNIFIED APCD, AND NORTH COAST UNIFIED AQMD

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A .....	General Provisions .....	X	X	X	X
D .....	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da .....	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X	X	X
Db .....	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc .....	Small Industrial-Commercial-Institutional Steam Generating Units.	.....	X	X	.....
E .....	Incinerators .....	X	X	X	X
Ea .....	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	.....	X	.....	.....
Eb .....	Large Municipal Waste Combustors Constructed After September 20, 1994.	.....	X	.....	.....
Ec .....	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	.....	X	.....	.....
F .....	Portland Cement Plants .....	X	X	X	X
G .....	Nitric Acid Plants .....	X	X	X	X
Ga .....	Nitric Acid Plants For Which Construction, Reconstruction or Modification Commenced After October 14, 2011.	.....	.....	.....	.....
H .....	Sulfuric Acid Plant .....	X	X	X	X
I .....	Hot Mix Asphalt Facilities .....	X	X	X	X
J .....	Petroleum Refineries .....	X	X	X	X
Ja .....	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	.....	X	.....	.....
K .....	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka .....	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb .....	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L .....	Secondary Lead Smelters .....	X	X	X	X
M .....	Secondary Brass and Bronze Production Plants .....	X	X	X	X
N .....	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na .....	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X	X	X
O .....	Sewage Treatment Plants .....	X	X	X	X
P .....	Primary Copper Smelters .....	X	X	X	X
Q .....	Primary Zinc Smelters .....	X	X	X	X
R .....	Primary Lead Smelters .....	X	X	X	X
S .....	Primary Aluminum Reduction Plants .....	X	X	X	X

TABLE 7 TO PARAGRAPH (d)(2)(v)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY APCD, MOJAVE DESERT AQMD, MONTEREY BAY UNIFIED APCD, AND NORTH COAST UNIFIED AQMD—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
T .....	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	X	X	X	X
U .....	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	X	X	X	X
V .....	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	X	X	X	X
W .....	Phosphate Fertilizer Industry: Triple Superphosphate Plants.	X	X	X	X
X .....	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y .....	Coal Preparation and Processing Plants .....	X	X	X	X
Z .....	Ferroalloy Production Facilities .....	X	X	X	X
AA .....	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa .....	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB .....	Kraft Pulp Mills .....	X	X	X	X
CC .....	Glass Manufacturing Plants .....	X	X	X	X
DD .....	Grain Elevators .....	X	X	X	X
EE .....	Surface Coating of Metal Furniture .....	X	X	X	X
FF .....	(Reserved) .....				
GG .....	Stationary Gas Turbines .....	X	X	X	X
HH .....	Lime Manufacturing Plants .....	X	X	X	X
KK .....	Lead-Acid Battery Manufacturing Plants .....	X	X	X	X
LL .....	Metallic Mineral Processing Plants .....	X	X	X	X
MM .....	Automobile and Light Duty Trucks Surface Coating Operations.	X	X	X	X
NN .....	Phosphate Rock Plants .....	X	X	X	X
PP .....	Ammonium Sulfate Manufacture .....	X	X	X	X
QQ .....	Graphic Arts Industry: Publication Rotogravure Printing .....	X	X	X	X
RR .....	Pressure Sensitive Tape and Label Surface Coating Operations.	X	X	X	X
SS .....	Industrial Surface Coating: Large Appliances .....	X	X	X	X
TT .....	Metal Coil Surface Coating .....	X	X	X	X
UU .....	Asphalt Processing and Asphalt Roofing Manufacture .....	X	X	X	X
VV .....	Equipment Leaks of VOC in the Synthetic Organic Industry Chemicals Manufacturing.	X	X	X	X
VVa .....	Equipment Leaks of VOC in the Synthetic Organic Industry for Which Construction, Reconstruction, or Chemicals Manufacturing Modification Commenced After November 7, 2006.		X		
WW .....	Beverage Can Surface Coating Industry .....	X	X	X	X
XX .....	Bulk Gasoline Terminals .....				
AAA .....	New Residential Wood Heaters .....	X	X	X	X
BBB .....	Rubber Tire Manufacturing Industry .....	X	X	X	X
CCC .....	(Reserved) .....				
DDD .....	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	
EEE .....	(Reserved) .....				
FFF .....	Flexible Vinyl and Urethane Coating and Printing .....	X	X	X	X
GGG .....	Equipment Leaks of VOC in Petroleum Refineries .....	X	X	X	X
GGGa .....	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.		X		
HHH .....	Synthetic Fiber Production Facilities .....	X	X	X	X
III .....	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X		
JJJ .....	Petroleum Dry Cleaners .....	X	X	X	X
KKK .....	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL .....	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions .....	X	X	X	X
MMM .....	(Reserved) .....				
NNN .....	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	

TABLE 7 TO PARAGRAPH (d)(2)(v)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY APCD, MOJAVE DESERT AQMD, MONTEREY BAY UNIFIED APCD, AND NORTH COAST UNIFIED AQMD—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
OOO .....	Nonmetallic Mineral Processing Plants .....	X	X	X	X
PPP .....	Wool Fiberglass Insulation Manufacturing Plants .....	X	X	X	X
QQQ .....	VOC Emissions From Petroleum Refinery Wastewater Systems.	X	X	X	X
RRR .....	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	.....	X	.....	.....
SSS .....	Magnetic Tape Coating Facilities .....	X	X	X	X
TTT .....	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU .....	Calciners and Dryers in Mineral Industries .....	.....	X	X	.....
VVV .....	Polymeric Coating of Supporting Substrates Facilities .....	.....	X	X	X
WWW .....	Municipal Solid Waste Landfills .....	.....	X	X	.....
AAAA .....	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	.....	X	.....	.....
CCCC .....	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	.....	X	.....	.....
EEEE .....	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	.....	X	.....	.....
GGGG .....	(Reserved) .....	.....	.....	.....	.....
HHHH .....	(Reserved) .....	.....	.....	.....	.....
IIII .....	Stationary Compression Ignition Internal Combustion Engines.	.....	X	X	.....
JJJJ .....	Stationary Spark Ignition Internal Combustion Engines .....	.....	X	X	.....
KKKK .....	Stationary Combustion Turbines .....	.....	X	X	.....
LLLL .....	New Sewage Sludge Incineration Units .....	.....	.....	.....	.....
OOOO .....	Crude Oil and Natural Gas Production, Transmission, and Distribution.	.....	.....	.....	.....

(vii) \* \* \*

TABLE 9 TO PARAGRAPH (d)(2)(vii)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY APCD, SAN JOAQUIN VALLEY UNIFIED APCD, SAN LUIS OBISPO COUNTY APCD, AND SANTA BARBARA COUNTY APCD

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A .....	General Provisions .....	X	X	X	X
D .....	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da .....	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X	X	X
Db .....	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc .....	Small Industrial-Commercial-Institutional Steam Generating Units.	X	X	X	X
E .....	Incinerators .....	X	X	X	X
Ea .....	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X	X	X	.....
Eb .....	Large Municipal Waste Combustors Constructed After September 20, 1994.	X	X	.....	X
Ec .....	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X	.....	.....	X
F .....	Portland Cement Plants .....	X	X	X	.....
G .....	Nitric Acid Plants .....	X	X	X	.....



TABLE 9 TO PARAGRAPH (d)(2)(vii)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY APCD, SAN JOAQUIN VALLEY UNIFIED APCD, SAN LUIS OBISPO COUNTY APCD, AND SANTA BARBARA COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
Ga	Nitric Acid Plants For Which Construction, Reconstruction or Modification Commenced After October 14, 2011.				
H	Sulfuric Acid Plant	X	X	X	
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.				X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X	X	
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	
Q	Primary Zinc Smelters	X	X	X	
R	Primary Lead Smelters	X	X	X	
S	Primary Aluminum Reduction Plants	X	X	X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	X	X	X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	X	X	X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	X	X	X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants.	X	X	X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	
Y	Coal Preparation and Processing Plants	X	X	X	
Z	Ferroalloy Production Facilities	X	X	X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	
BB	Kraft Pulp Mills	X	X	X	
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	
LL	Metallic Mineral Processing Plants	X	X	X	
MM	Automobile and Light Duty Trucks Surface Coating Operations.	X	X	X	
NN	Phosphate Rock Plants	X	X	X	
PP	Ammonium Sulfate Manufacture	X	X	X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations.	X	X	X	
SS	Industrial Surface Coating: Large Appliances	X	X	X	
TT	Metal Coil Surface Coating	X	X	X	
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	

TABLE 9 TO PARAGRAPH (d)(2)(vii)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY APCD, SAN JOAQUIN VALLEY UNIFIED APCD, SAN LUIS OBISPO COUNTY APCD, AND SANTA BARBARA COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
VV	Equipment Leaks of VOC in the Synthetic Organic Industry Chemicals Manufacturing.	X	X	X	
VVa	Equipment Leaks of VOC in the Synthetic Organic Industry for Which Construction, Reconstruction, or Chemicals Manufacturing Modification Commenced After November 7, 2006.				X
WW	Beverage Can Surface Coating Industry	X	X	X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wood Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X		
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				X
HHH	Synthetic Fiber Production Facilities	X	X	X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X		
JJJ	Petroleum Dry Cleaners	X	X	X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	
LLL	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions	X	X	X	
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X		
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems.	X	X	X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X	X	X	
SSS	Magnetic Tape Coating Facilities	X	X	X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	
UUU	Calciners and Dryers in Mineral Industries	X	X	X	X
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	X
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	X			X
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X			X
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X			X
GGGG	(Reserved)				
HHHH	(Reserved)				
IIII	Stationary Compression Ignition Internal Combustion Engines.	X			X
JJJJ	Stationary Spark Ignition Internal Combustion Engines	X			X
KKKK	Stationary Combustion Turbines	X			X
LLLL	New Sewage Sludge Incineration Units				
OOOO	Crude Oil and Natural Gas Production, Transmission, and Distribution.				

TABLE 9 TO PARAGRAPH (d)(2)(vii)—DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY APCD, SAN JOAQUIN VALLEY UNIFIED APCD, SAN LUIS OBISPO COUNTY APCD, AND SANTA BARBARA COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
QQQQ .....	Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.	X	.....	.....	.....
TTTT .....	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.	X	.....	.....	.....

\* \* \* \* \*

[FR Doc. 2022-06279 Filed 3-30-22; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2021-0604; FRL-9657-01-OCSP]

**Sodium Salt of Acifluorfen; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of sodium salt of acifluorfen in or on beet, sugar, roots and beet, sugar, leaves. This action is in response to EPA’s granting of emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarbeets. This regulation establishes a maximum permissible level for residues of sodium salt of acifluorfen in or on these commodities. These time-limited tolerances expire on December 31, 2024.

**DATES:** This regulation is effective March 31, 2022. Objections and requests for hearings must be received on or before May 31, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2021-0604, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566-1744.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDFFRNotices@epa.gov](mailto:RDFFRNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Office of the Federal Register’s e-CFR site at <https://www.ecfr.gov/current/title-40>.

*C. How can I file an objection or hearing request?*

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2021-0604 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 31, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2021-0604, by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(l)(6), is establishing time-limited tolerances for residues of sodium salt of acifluorfen, in or on beet, sugar, roots at 0.1 parts per million (ppm), and beet, sugar, leaves at 0.1 ppm. These time-limited tolerances expire on December 31, 2024.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in or on food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances or exemptions can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18-related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions

exist which require such exemption.” EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemptions for Sodium Salt of Acifluorfen on Sugarbeets and FFDCA Tolerances

The Colorado, Michigan, Minnesota, Nebraska, and North Dakota Departments of Agriculture requested specific emergency exemptions for postemergence use of acifluorfen to control glyphosate-resistant pigweed species, Palmer amaranth and waterhemp, on sugarbeets. According to the States, glyphosate-resistant Palmer amaranth and waterhemp have reached population levels so high that sugarbeet production is severely impacted. They assert that without a viable alternative tool for postemergence control, growers are unable to contain infestations in their sugarbeet fields and are expected to experience significant economic loss.

After having reviewed the applications, EPA determined that an emergency condition exists for these States, and that the criteria for approval of these emergency exemptions are met. EPA authorized specific exemptions under FIFRA section 18 for the use of sodium salt of acifluorfen on sugarbeets for postemergence control of glyphosate-resistant pigweed species in Colorado, Michigan, Minnesota, Nebraska, and North Dakota.

As part of its evaluation of the emergency exemption applications, EPA assessed the potential risks presented by residues of sodium salt of acifluorfen in or on sugarbeets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address the urgent non-routine situation in these States and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2024, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sugarbeets after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances

earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether sodium salt of acifluorfen meets FIFRA’s registration requirements for use on sugarbeets or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these time-limited tolerance decisions serve as a basis for registration of sodium salt of acifluorfen by a State for special local needs under FIFRA section 24(c). Nor do these tolerances by themselves serve as the authority for persons in any State other than Colorado, Michigan, Minnesota, Nebraska, and North Dakota to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding these emergency exemptions for sodium salt of acifluorfen, contact the Agency’s Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of these emergency exemption requests

and the time-limited tolerances for residues of sodium salt of acifluorfen on beet, sugar, roots at 0.1 parts per million (ppm), and beet, sugar, leaves at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

**A. Toxicological Points of Departure/ Levels of Concern**

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there

is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any

amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides>.

A summary of the toxicological endpoints for sodium salt of acifluorfen used for human health risk assessment is shown in Table 1 of this unit.

**TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SODIUM SALT OF ACIFLUORFEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT**

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 20 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Acute RfD = aPAD = 0.20 mg/kg/day.	Rat Developmental Study: LOAEL = 90 mg/kg/day based on increased incidence of slightly dilated lateral ventricles of the brain.
Acute dietary (General population including infants and children).	NOAEL = 293 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Acute RfD = aPAD = 2.9 mg/kg/day.	Acute Neurotoxicity Study: LOAEL = 440 mg/kg/day based on decreased motor activity in females.
Chronic dietary (All populations)	NOAEL = 1.25 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = cPAD = 0.013 mg/kg/day.	Rat Parental Reproduction Study: LOAEL = 25 mg/kg/day based on dilatation of tubules in the outer medulla of kidneys in parental females of both generations (33/35 (P1) and 28/40 (F1) treated parents vs 0/35–41 controls); one occurrence of tubular epithelial necrosis was noted in the P1 females (compared to 0 controls).
Incidental oral short-term (1 to 30 days).	NOAEL = 25 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Residential LOC for MOE = 100. No residential uses. Accounts for spray drift	Rat Offspring Reproduction Study: LOAEL = 125 mg/kg/day based on decreased body weight (both generations; ↓6–26%) and increased incidence of dilatation of the renal pelvis in the F2 generation.
Dermal short-term (1 to 30 days).	NOAEL = 25 mg/kg/day. DAF = 18% UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Residential LOC for MOE = 100. No residential uses. Accounts for spray drift	Rat Offspring Reproduction Study: LOAEL = 125 mg/kg/day based on decreased body weight (both generations; ↓6–26%) and increased incidence of dilatation of the renal pelvis in the F2 generation. Rat Developmental Study is supportive.
Cancer (Oral, dermal, inhalation).	Classification: Likely to be carcinogenic to humans at high enough doses to cause the biochemical and histopathological changes in livers of rodents, but unlikely to be carcinogenic at doses below those causing these changes. The non-linear RfD approach will be protective for chronic effects, including carcinogenicity.		

DAF = dermal absorption factor. FQPA SF = FQPA Safety Factor. LOAEL = lowest observed adverse effect level. LOC = level of concern. NOAEL = no observed adverse effect level. PAD = population adjusted dose (a = acute, c = chronic). Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. RfD = reference dose. MOE = margin of exposure. UF = uncertainty factor. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies).

**B. Exposure Assessment**

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sodium salt of acifluorfen, EPA considered exposure under the

time-limited tolerances established by this action as well as all existing sodium salt of acifluorfen tolerances in 40 CFR 180.383. EPA assessed dietary

exposures from sodium salt of acifluorfen in food as follows:

- i. *Acute exposure.* Such effects were identified for sodium salt of acifluorfen. In estimating acute dietary exposure,

EPA used food consumption information from the Dietary Exposure Evaluation and Model-Food Commodity Intake Database (DEEM-FCID). As to residue levels in food, EPA assumed that sodium acifluorfen residues were present at tolerance levels in all commodities for which tolerances have been established or proposed and that 100% of the crops were treated with sodium salt of acifluorfen.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the Dietary Exposure Evaluation and Model-Food Commodity Intake Database (DEEM-FCID). As to residue levels in food, EPA assumed that acifluorfen residues were present at tolerance levels in all commodities for which tolerances have been identified or proposed and that 100% of the crops were treated with sodium salt of acifluorfen.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit IV.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to sodium salt of acifluorfen. Cancer risk was assessed using the same exposure estimates as discussed in Unit IV.B.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for sodium salt of acifluorfen. Tolerance level residues and 100% PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sodium salt of acifluorfen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sodium salt of acifluorfen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at [https://www2.epa.gov/pesticide-science-and-assessing-](https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide)

[pesticide-risks/about-water-exposure-models-used-pesticide.](https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide)

Based on the groundwater modeling results from Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of sodium salt of acifluorfen for acute exposures are estimated to be 66.8 parts per billion (ppb) for surface water and 146 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic (non-cancer) dietary risk assessments, the water concentration value of 146 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sodium salt of acifluorfen is not registered for any specific use patterns that would result in residential exposure.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at [https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.](https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide)

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

At this time, there is not sufficient information to determine if any other pesticides share a common mechanism of toxicity with sodium salt of acifluorfen. For purposes of this time-limited tolerance action, EPA has assumed that sodium salt of acifluorfen does not share a common mechanism of toxicity with any other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at [https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risks-pesticides.](https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risks-pesticides)

### C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of

safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

#### 2. *Prenatal and postnatal sensitivity.*

There is evidence of increased susceptibility following in utero exposure to sodium acifluorfen in the Sprague Dawley rat developmental toxicity study. However, there is low concern because effects are well characterized with clear NOEL/LOEL values and the chosen points of departure for risk assessment for each scenario are protective of these effects.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for sodium salt of acifluorfen is complete.

ii. There is some indication that sodium salt of acifluorfen is a neurotoxic chemical, however, the chosen points of departure for risk assessment are protective of these effects, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is evidence that sodium salt of acifluorfen results in increased susceptibility following exposure *in utero* rats in the Sprague Dawley rat prenatal developmental study. However, there is low concern because effects are well characterized with clear NOEL/LOEL values and the chosen points of departure for risk assessment for each scenario are protective of these effects.

iv. There are no residual uncertainties identified in the exposure database. The dietary food exposure assessments were performed based on 100% PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sodium salt of acifluorfen in drinking water. These assessments will not underestimate the exposure and risks posed by sodium salt of acifluorfen.

#### D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sodium salt of acifluorfen will occupy 4.0% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure. There are no registered residential uses of sodium salt of acifluorfen, and so acute aggregate risk is equivalent to acute dietary risk, which is not of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sodium salt of acifluorfen from food and water will utilize 63% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. There are no registered residential uses of sodium salt of acifluorfen, and so chronic aggregate risk is equivalent to chronic dietary risk, which is not of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Sodium salt of acifluorfen is not currently registered for a use that could result in short-term (non-occupational) residential exposure. Because there are no registered residential uses, short-term aggregate risk is equivalent to chronic dietary risk, which is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no registered residential uses, intermediate-term risk is equivalent to chronic dietary risk, which is not of concern.

5. *Aggregate cancer risk for U.S. population.* Sodium salt of acifluorfen is classified as “likely to be carcinogenic

to humans at doses high enough to cause the biochemical and histopathological changes in livers of rodents, but unlikely to be carcinogenic at doses below those causing these changes.” EPA determined that non-linear extrapolation be used in this assessment instead of a separate Q1\* based cancer aggregate assessment.” A non-cancer dietary assessment was completed that resulted in risk levels below the LOC of 100%. These levels are considered protective for both non-cancer and cancer risk because EPA regulates at doses below those where initiation of tumor formation is expected.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sodium salt of acifluorfen residues. More detailed information on the subject action to establish time-limited tolerances in or on beet, sugar, roots and beet, sugar, leaves can be found at <https://www.regulations.gov> in the document entitled “Sodium Acifluorfen: Human Health Risk Assessment for Section 18 Emergency Exemptions for the Use on Sugarbeets in Nebraska and Colorado.” This document can be found in docket ID number EPA–HQ–OPP–2021–0604.

#### V. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology, the Pesticide Analytical Manual (PAM) Volume II gas chromatography/electron capture detector (GC/ECD) method, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). Codex is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-

setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established a MRL for sodium salt of acifluorfen.

#### VI. Conclusion

Therefore, time-limited tolerances are established for residues of sodium salt of acifluorfen, in or on beet, sugar, roots at 0.1 parts per million (ppm), and beet, sugar, leaves at 0.1 ppm. These tolerances expire on December 31, 2024.

#### VII. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the

relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VIII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2022.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

**PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.383(b) is added to read as follows:

**§ 180.383 Sodium salt of acifluorfen; tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established

for residues of the herbicide sodium salt of acifluorfen, including its metabolites and degradates, in or on the specified agricultural commodities in the following table, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of acifluorfen acid, (5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate), acifluorfen amine methyl ester (methyl 5-[2-chloro-4(trifluoromethyl)phenoxy]-2-aminobenzoate), calculated as the stoichiometric equivalent of acifluorfen acid in or on the commodities. The tolerances expire on the date specified in the table.

TABLE 2 TO PARAGRAPH (b)

Commodity	Parts per million	Expiration date
Beet, sugar, roots .....	0.1	12/31/2024
Beet, sugar, leaves .....	0.1	12/31/2024

\* \* \* \* \*

[FR Doc. 2022-06817 Filed 3-30-22; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R8-ES-2018-0042; FXES1113090FEDR-223-FF09E42000]

**RIN 1018-BD00**

**Endangered and Threatened Wildlife and Plants; Reclassification of the Endangered Layia carnosa (Beach Layia) to Threatened With Section 4(d) Rule**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reclassifying the plant beach layia (*Layia carnosa*) from an endangered to a threatened species under the Endangered Species Act of 1973, as amended (Act), due to substantial improvements in the species' overall status since its original listing as endangered in 1992. This action is based on a thorough review of the best scientific and commercial data available, which indicates that beach layia no longer meets the definition of an endangered species under the Act. Beach layia will remain protected as a threatened species under the Act. We

are also finalizing a rule under section 4(d) of the Act that provides for the conservation of beach layia.

**DATES:** This rule is effective May 2, 2022.

**ADDRESSES:** This final rule, supporting documents we used in preparing this rule, and public comments we received are available on the internet at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2018-0042.

**FOR FURTHER INFORMATION CONTACT:** Tanya Sommer, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Rd., Arcata, CA 95521; telephone 707-822-7201.

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:**

**Previous Federal Actions**

On June 22, 1992, we listed the beach layia as an endangered species (57 FR 27848). On September 29, 1998, we finalized a recovery plan for this and six other coastal species (Service 1998, entire). In 2011, we completed a 5-year review (Service 2011, entire) and concluded that there was evidence to support a decision to reclassify beach layia from an endangered species to a threatened species under the Act. We announced the availability of this review on April 27, 2012 (77 FR 25112).

On September 30, 2020, we proposed to reclassify beach layia from an endangered species to a threatened species with a rule issued under section 4(d) of the Act ("4(d) rule") to provide for the conservation of beach layia (85 FR 61684). On April 13, 2021, we reopened the public comment period for the proposed rule and announced a public informational meeting and public hearing (86 FR 19184), which we held on April 29, 2021.

**Summary of Changes From the Proposed Rule**

In this rule, we make certain nonsubstantive, editorial changes to some text that we presented in the proposed rule, and we include a minor amount of new information (*e.g.*, some updated abundance information and new references) that we received or that became available since the proposed rule published. However, this new information did not change our analysis, rationales, or determination for either



the reclassification of the beach layia to a threatened species (“downlisting”) or the 4(d) rule for the species.

## I. Reclassification Determination

### Background

It is our intent to discuss only those topics directly related to downlisting beach layia in this rule. For more information on the species’ description, life history, genetics, and habitat, please refer to the May 8, 2018, SSA report (Service 2018, entire), which is a comprehensive assessment of the biological status of beach layia. At the time of listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly off-highway vehicle (OHV) activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts. Thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species demonstrating positive responses in abundance. Additionally, significant areas have been set aside as preserves and conservation areas. After taking into consideration our threats analysis and recovery criteria (Service 1998, pp. 43–48), we have determined that the species no longer meets the Act’s definition of an endangered species but does meet the Act’s definition of a threatened species (likely to become an endangered species within the foreseeable future). Given this information, the best available scientific and commercial information now indicate that the species has improved to the point that it can be downlisted.

The SSA report provides a thorough account of the species’ overall condition currently and into the future. In this discussion, we summarize the conclusions of that assessment, including: (1) The species’ description, ecology, habitat, and resource needs; (2) beach layia’s current condition, including population abundance, distribution, and factors affecting its viability; and (3) potential future conditions. The full report can be accessed on the internet at <https://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042.

### Species Description

Beach layia is a succulent annual herb belonging to the sunflower family (Asteraceae). Plants range up to 6 inches

(in) (15.2 centimeters (cm)) tall and 16 in (40.6 cm) across (Baldwin *et al.* 2012, p. 369). Characteristics distinguishing beach layia from similar species include its fleshy leaves; inconspicuous flower heads with short (0.08 to 0.1 in (2 to 2.5 millimeter (mm)) long) white ray flowers (occasionally purple) and yellow disk flowers; and bristles around the top of the one-seeded achene, or dry fruit (Service 1998, p. 43).

### Ecology, Habitat, and Resource Needs of Beach Layia

Beach layia germinates during the rainy season between fall and mid-winter, blooms in spring (March to July), and completes its life cycle before the dry season (July to September) (Service 1998, p. 45). Populations tend to be patchy and subject to large annual fluctuations in size and dynamic changes in local distribution associated with the shifts in dune blowouts, remobilization, and natural dune stabilization that occur in the coastal dune ecosystem (Service 1998, p. 45). Beach layia plants often occur where sparse vegetation traps wind-dispersed seeds, but causes minimal shading. Seeds are dispersed by wind mostly during late spring and summer months (Service 1998, p. 45). Additionally, beach layia is self-compatible (*i.e.*, able to be fertilized by its own pollen), is capable of self-pollination, and is visited by a variety of insects that may assist in cross-pollination (Sahara 2000, entire). Although the role of pollinators is currently unclear, sexual reproduction does add to genetic diversity.

Beach layia occurs in open spaces of sandy soil between the low-growing perennial plants in the *Abronia latifolia*—*Ambrosia chamissonis* herbaceous alliance (dune mat) and *Leymus mollis* herbaceous alliance (sea lyme grass patches) (Sawyer *et al.* 2009, pp. 743–745, 958–959). Typically, the total vegetation cover in both communities is relatively sparse, and many annual species, including beach layia, colonize the space between established, tufted perennials. Beach layia can also occur in narrow bands of moderately disturbed habitat along the edges of trails and roads in dune systems dominated by invasive species.

Coastal dune systems are composed of a mosaic of vegetation communities of varying successional stages (see additional discussion in section 4.4 of the SSA report (Service 2018, pp. 9–11)). Beach layia occurs in early to mid-successional communities in areas where sand is actively being deposited or eroding. Too much sand movement prevents plants from establishing, but

areas with some movement on a periodic basis support early successional communities. Movement of sand by wind is essential for the development and sustainability of a dune system. Wind is also important to beach layia specifically because it is the mechanism by which seeds are dispersed. The achenes (a small, dry, one-seeded fruit that does not open to release the seed) have pappus (feathery bristles) that allow them to be carried by wind for a short distance. Although not all seeds may land on suitable habitat, this adaptation allows the small annual to spread across the landscape into uninhabited areas.

As a winter germinating annual, beach layia requires rainfall during the winter months (November through February) for germination and, although it is relatively tolerant to the drought-like conditions of upland dunes, it does need some moisture through the spring to prevent desiccation. Moisture also reduces the risk of burial, as dry sand is more mobile and mortality caused by burial has been documented (Imper 2014, p. 6).

The overall resource needs that beach layia requires in order for individuals to complete their life cycles and for populations to maintain viability are:

- (1) Sandy soils with sparse native vegetation cover,
- (2) Rainfall during the winter germination period,
- (3) Sunlight (full sun exposure for photosynthesis), and
- (4) Unknown degree of cross-pollination (to add to genetic diversity).

### Species Distribution and Abundance

For the purposes of our analysis as summarized in our SSA report (Service 2018, entire), we grouped the populations by ecoregions based on average annual rainfall (precipitation is directly correlated with abundance for this species), habitat characteristics, and distance between population centers. The North Coast Ecoregion contains the largest and most resilient populations and receives the highest average annual rainfall. The Central Coast Ecoregion receives less rain than the North Coast Ecoregion but more than the South Coast Ecoregion, and is comprised of three small populations on the Monterey peninsula that are less resilient due to low abundance, although habitat quality is high at two of the sites. The South Coast Ecoregion, both historically and currently, consists of a single population on the Vandenberg Space Force Base (SFB; formerly Vandenberg Air Force Base). Average annual rainfall varies across the three ecoregions. Rainfall in the North

Coast Ecoregion is around 38 in (96 cm), while the Central Coast Ecoregion receives 20 in (51 cm), and the South Coast Ecoregion receives 14 in (36 cm) (National Oceanic and Atmospheric Administration (NOAA) 2017).

Historical distribution of beach layia is similar to that known currently, while abundance values have increased, primarily due to increased survey efforts, amelioration of some threats, and a better understanding of the species' reproduction pattern following years with high amounts of rainfall. The current distribution includes populations spread across dune systems in the following geographic areas (ecoregions) covering more than 500 miles (mi) (805 kilometers (km)) of shoreline in northern, central, and southern California (see figures 7–13 and table 2 in the SSA report (Service 2018, pp. 15–24)):

- North Coast Ecoregion:  
*Humboldt County*—Freshwater Lagoon Spit, Humboldt Bay area,

mouth of the Eel River, McNutt Gulch, and mouth of the Mattole River  
*Marin County*—Point Reyes National Seashore

- Central Coast Ecoregion:  
*Monterey County*—Monterey Peninsula
- South Coast Ecoregion:  
*Santa Barbara County*—Vandenberg SFB (located on part of the Guadalupe-Nipomo Dunes)

Of the known historical populations, four are considered extirpated, including the San Francisco population, the Point Pinos population in the Monterey area, and two populations north of the Mad River in Humboldt County. All currently extant populations were known at the time of listing and when the recovery plan was finalized (1992 and 1998, respectively), with the exception of the Freshwater Lagoon population discovered in 2000, at the far northern extent of the species' range (see table, below). The total

number of individuals across the range of the species reported in the recovery plan was 300,000. However, sampling data collected at the Lanphere Dunes that same year yielded an estimate of more than one million plants for that subpopulation alone, which indicates the estimate in the recovery plan was substantially lower than the actual number of individuals (Pickart 2018, pers. comm.).

Current conditions and trend information (when available) are summarized below for the 13 extant populations (including the North Spit Humboldt Bay population that is comprised of 8 subpopulations and the largest proportion of plants throughout the species' range). Information about extirpated populations is also shown in the table, below. Additional information on current conditions of these populations, as well as information about the four extirpated populations, is found in section 7.0 of the SSA report (Service 2018, pp. 25–38).

TABLE OF BEACH LAYIA'S HISTORICAL AND CURRENT POPULATIONS, SUBPOPULATIONS, OWNERSHIP, AND ABUNDANCE ESTIMATES, BASED ON THE BEST AVAILABLE SCIENTIFIC AND COMMERCIAL INFORMATION

Population	Subpopulation	Status	Ownership	2017 Acres	Most recent abundance estimates (as of 2017, unless indicated otherwise)
<b>NORTH COAST ECOREGION (Humboldt County)</b>					
Freshwater Lagoon Spit.		Extant	National Park Service	13	469 <sup>1</sup> (2021).
Mouth of Little River.		Extirpated <sup>2</sup>	California State Parks	0	N/A.
Mouth of Mad River.		Extirpated <sup>2</sup>	Humboldt County	0	N/A.
North Spit Humboldt Bay.	Mad River Beach	Extant	Humboldt County, Humboldt Bay National Wildlife Refuge (Refuge).	unknown	unknown (2021).
	Bair/Woll	Extant	Refuge, Private	<sup>3</sup> 13	unknown (2021)
	Lanphere Dunes	Extant	Refuge	<sup>3</sup> 33	1.3 million <sup>3</sup> (combined with Ma-le'i North).
	Ma-le'i North	Extant	Refuge	<sup>3</sup> 29	1.3 million <sup>3</sup> (combined with Lanphere Dunes).
	Ma-le'i South	Extant	Bureau of Land Management (BLM)	<sup>3</sup> 48	2.1 million <sup>3</sup>
	Manila North	Extant	Friends of the Dunes, Manila Community Services District.	<sup>3</sup> 82	1.4 million <sup>3</sup> .
	Manila South	Extant	Private	<sup>3</sup> 47	unknown (2021).
Elk River	Samoa/Eureka Dunes	Extant	BLM, City of Eureka	<sup>3</sup> 49	6.7 million <sup>3</sup> .
		Extant	City of Eureka	<sup>3</sup> 15	468,000.
South Spit Humboldt Bay.		Extant	California Department of Fish and Wildlife (CDFW), BLM.	<sup>3</sup> 83	6.1 million <sup>3</sup> .
North Spit Eel River.		Extant	CDFW	<sup>3</sup> 37	4.7 million <sup>3</sup> .
South Spit Eel River.		Extant	Wildlands Conservancy	<sup>3</sup> 1.5	11,307 <sup>4</sup> .
McNutt Gulch		Extant	Private	<sup>5</sup> 1	unknown (2021).
Mouth of Mattole River.		Extant	BLM	<sup>2</sup> 27	3.1 million <sup>6</sup> .
<b>NORTH COAST ECOREGION (Marin County)</b>					
Point Reyes NS		Extant	National Park Service	<sup>7</sup> 146	2.7 million <sup>7</sup> .
<b>CENTRAL COAST ECOREGION (San Francisco County)</b>					
San Francisco		Extirpated		0	N/A.
<b>CENTRAL COAST ECOREGION (Monterey County)</b>					
Point Pinos		Extirpated <sup>8</sup>	City of Pacific Grove	0	Extirpated <sup>8</sup> .

TABLE OF BEACH LAYIA'S HISTORICAL AND CURRENT POPULATIONS, SUBPOPULATIONS, OWNERSHIP, AND ABUNDANCE ESTIMATES, BASED ON THE BEST AVAILABLE SCIENTIFIC AND COMMERCIAL INFORMATION—Continued

Population	Subpopulation	Status	Ownership	2017 Acres	Most recent abundance estimates (as of 2017, unless indicated otherwise)
Asilomar State Beach.	.....	Extant .....	California State Parks .....	<sup>9</sup> 0.17 .....	<sup>9</sup> 1,541.
Indian Village Dunes.	.....	Extant .....	Private .....	<sup>10</sup> 0.55 .....	<sup>11</sup> 199 (2018).
Signal Hill Dunes	.....	Extant .....	Private .....	<sup>5</sup> 1 .....	unknown (2021).
<b>SOUTH COAST ECOREGION (Santa Barbara County)</b>					
Vandenberg SFB	.....	Extant .....	Department of Defense .....	<sup>12</sup> 2.8 (2019) .....	<sup>12</sup> 11,902 (2019).

<sup>1</sup> Census and mapping conducted by the National Park Service for both acreage (Julian 2017, pers. comm.) and abundance information (Julian 2021, pers. comm.).  
<sup>2</sup> Source is the California Natural Diversity Database (CNDDDB), 2017.  
<sup>3</sup> Mapping and population estimate conducted by the Arcata Fish and Wildlife Office, 2017.  
<sup>4</sup> Census conducted by the Arcata Fish and Wildlife Office (Goldsmith 2017, pers. obs.).  
<sup>5</sup> Actual amount of occupied habitat not determined; conservative estimate.  
<sup>6</sup> Estimate based on average density from monitoring data collected by BLM (Hassett 2017, pers. comm.).  
<sup>7</sup> Point Reyes NS, mapping from 2001–2003 and 2017 sampling conducted in Abbots Lagoon area (Parsons 2017, pers. comm.).  
<sup>8</sup> Presumed extirpated information by CNDDDB 2017.  
<sup>9</sup> Mapping and census conducted by California State Parks (Gray 2017, pers. comm.).  
<sup>10</sup> Mapping conducted as part of a capstone project by a student at Monterey Bay State University (Johns 2009).  
<sup>11</sup> Estimate provided by consultant (Dorrell-Canepa 2018).  
<sup>12</sup> Mapping and acreage census conducted most recently in 2019 (ManTech SRS Technologies Inc. 2020, pp. 46–47).

Freshwater Lagoon Spit Population

This is the northern-most population of beach layia, which was discovered during spring 2000, in northern Humboldt County at Redwood National Park, currently encompassing approximately 3 acres (ac) (1.2 hectares (ha)) (Julian 2017, pers. comm.) and 469 plants (Julian 2021, pers. comm.). A census of the population has been conducted every year since 2000, and results indicate the population and individual patches fluctuate substantially, with a peak of 11,110 plants recorded in 2003, and as few as 263 plants in 2014 (Julian 2017, pers. comm.) (see figure 14 in the SSA report). The overall trend of this population is declining, likely due to drought conditions and high cover of native grasses (e.g., red fescue (*Festuca rubra*)) adversely affecting its resource needs (i.e., reduction of area of sparse vegetative cover and sunlight).

North Spit Humboldt Bay Population

**Mad River Beach Subpopulation:** The Mad River Beach subpopulation is the northern-most subpopulation (one of eight) within the North Spit Humboldt Bay population (hereafter referred to as “North Spit”). There is little information available for this subpopulation, which resides on Humboldt County-owned land south of the mouth of the Mad River, as well as the nearby Humboldt Bay National Wildlife Refuge-owned Long parcel. Beach layia is fairly abundant and widely distributed within the dune mat habitat in this area (Goldsmith 2018, pers. obs.). However, the vegetation community is dominated by invasive,

nonnative species including European beachgrass (*Ammophila arenaria*), annual grasses (ripgut brome (*Bromus diandrus*) and quaking grass (*Briza maxima*)), and yellow bush lupine (*Lupinus arboreus*) (Goldsmith 2018, pers. obs.). The subpopulation is conservatively estimated to encompass approximately 1 ac (0.4 ha), although abundance, distribution, and trend information is unknown. Suitable habitat is limited due to over-stabilization caused by a heavy invasion of invasive, nonnative species. No efforts to restore ecosystem function are currently under way, nor does the County or Refuge have any restoration planned at this time.

**Bair/Woll Subpopulation:** This subpopulation occurs on the Refuge-owned Bair parcel and privately owned Woll parcel; acquisition and restoration of the entire subpopulation is a high priority for the Refuge (Refuge 2013, p. 2). The majority of the area is dominated by nonnative, invasive species including European beachgrass, iceplant (*Carpobrotus edulis* and *C. chilensis*), yellow bush lupine, and annual grasses (Pickart 2018, pers. comm.). To date, restoration has occurred on the southwest corner of the Bair parcel. The subpopulation encompasses approximately 13 ac (5.3 ha), although abundance and trend information, and adequacy of resource needs—beyond the visible reduction of sparse vegetative cover—are unknown.

**Lanphere Dunes Subpopulation:** This subpopulation occurs on the Lanphere Dunes Unit of the Refuge and encompasses a conservative estimate of approximately 33 ac (13 ha) (Service 2017, unpublished data). Restoration

has been underway since the 1980s, including removal of invasive plants in an effort to restore ecosystem function. Ongoing nonnative species removal/maintenance appears necessary in this area to ensure that beach layia’s resource needs are met. Over the years, this population of beach layia has responded positively to restoration actions and negatively to lack of rainfall in the winter months (see figure 15 in the SSA report). In 2017, abundance was estimated for both Lanphere Dunes and Ma-le’l North (see below) at approximately 1 million individual plants (Pickart 2017, pers. comm.).

**Ma-le’l North Subpopulation:** This subpopulation resides directly south of the Lanphere Dunes on the Ma-le’l North Dunes Unit of the Refuge and comprises the northern end of the Ma-le’l Cooperative Management Area (CMA), the southern portion of which is cooperatively owned/managed by BLM (see *Ma-le’l South Subpopulation*, below). Nonnative plants (i.e., European beachgrass, annual grasses, iceplant, and yellow bush lupine) require continued control to maintain the open/sparse vegetative cover and adequate sunlight needs that beach layia relies on. The total subpopulation area is approximately 29 ac (11.7 ha) (Service 2017, unpublished data).

**Ma-le’l South Subpopulation:** Extending immediately south of the Ma-le’l North subpopulation, the Ma-le’l South subpopulation is approximately 48 ac (19.4 ha), had an estimate of approximately 2 million individuals in 2017, and is owned/managed by BLM. Restoration has produced positive results in favor of beach layia persistence, although periodic

maintenance of nonnative, invasive plants is necessary (Wheeler 2017, pers. comm.) to ensure the open/sparse vegetative cover resource need that beach layia relies on. Additionally, the best available data indicate this subpopulation is less abundant during drought years (2012–2015), followed by a positive spike in abundance following a winter of substantial rainfall (Wheeler 2017, pers. comm.) (see also figure 16 in the SSA report). The results of this subpopulation's monitoring (*i.e.*, that beach layia is less abundant during drought years and more abundant following winters with heavy rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species' ecology and life-history characteristics.

**Manila North Subpopulation:** This subpopulation encompasses two areas within close proximity to each other on lands owned/managed by the Manila Community Services District (CSD) and the nonprofit organization known as Friends of the Dunes. The total estimated subpopulation (both areas) was approximately 1.4 million individuals in 2017, and occupies approximately 82 ac (33 ha). Efforts have been made to remove nonnative, invasive species, but the efforts have not been consistent and many areas have been re-invaded. Active management is needed to ensure the availability of open/sparse vegetative cover and adequate sunlight needs that beach layia relies on.

**Manila South Subpopulation:** This subpopulation is immediately south of the Manila North subpopulation but resides on private property, encompassing approximately 47 ac (19 ha) as reported most recently in 2017 (Service 2017, unpublished data). The area is dominated with nonnative, invasive European beachgrass, iceplant, and annual grasses. Abundance and trend information, and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

**Samoa/Eureka Dunes Subpopulation:** This subpopulation is the southern extent/limit of the North Spit (Humboldt Bay) population, encompassing approximately 49 ac (20 ha) on lands owned/managed by both BLM and the City of Eureka, and was estimated to include more than 6 million individuals in 2017. The BLM lands occupied by the species are managed to provide both an Endangered Species Protection Area and an open OHV use area. The remainder of the City's occupied habitat includes an additional OHV use area, an industrial

zoned area containing an operational airport facility, and an 84-ac (34-ha) parcel under conservation easement known as the Eureka Dunes Protected Area held by the Center for Natural Lands Management. Some of this subpopulation has been restored; however, nonnative, invasive species continue to envelop open areas where beach layia plants occur. Some monitoring data recently available indicate the protected areas harbor a higher density of beach layia compared to the OHV area, including increased density of beach layia over the past 2 years, which correlates with increased precipitation over this same time frame (BLM 2016b). Similar to the monitoring results discussed for the Ma-le'l South subpopulation, above, the results of this subpopulation's monitoring (*i.e.*, beach layia occurring at higher densities in the restored, protected areas compared to heavily impacted OHV areas, and high densities of beach layia plants correlating with years that have heavy annual rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species' ecology and life-history characteristics.

#### Elk River Population

This population is owned and managed by the City of Eureka on the east shore of Humboldt Bay at the mouth of Elk River (see figure 8 in the SSA report). The spit is approximately 1.2 mi (1.9 km) long by up to 0.1 mi (0.16 km) wide, and beach layia occupies approximately 15 ac (6 ha) and was estimated to include 468,000 individuals in 2017 (Service 2017, unpublished data). Trend information is not available, although the most recent survey in 2017 indicates the area is dominated by nonnative, invasive European beachgrass (Goldsmith 2017, pers. obs.).

#### South Spit Humboldt Bay Population

The 5-mi (8-km) stretch of dune that supports beach layia extends south from Humboldt Bay's entrance to the base of Table Bluff (see figure 8 in the SSA report). The majority of this population is owned by the California Department of Fish and Wildlife (CDFW) as the Mike Thompson Wildlife Area, and the remainder is owned by BLM, which also manages the entire population (BLM 2014b, p. 3). The best available information suggests this population has increased in size since 2003, currently encompassing 83 ac (34 ha) with a population estimate of approximately 6 million plants (Service 2017, unpublished data). The steady increase in occupied beach layia habitat over

time is due to the continued restoration effort to remove nonnative, invasive European beachgrass and iceplant (BLM 2014b, p. 7; Wheeler 2017, pers. comm.). Additionally, monitoring data available from two plots established in 2008 indicate increased density of beach layia following restoration, decreased density during recent drought years, and a subsequent increased density with high levels of annual precipitation (BLM 2014b, p. 15). These monitoring data suggest that beach layia density increases dramatically following restoration, that density settles to a more moderate level as native plants fill in the previously invaded habitat, and that density is also strongly correlated to rainfall.

#### North Spit Eel River Population

Located immediately south of the South Spit Humboldt Bay population, this population encompasses 37 ac (15 ha) of conserved lands within the CDFW's Eel River Wildlife Area and was estimated to include 4.7 million individuals in 2017 (Service 2017, unpublished data). The area is dominated by nonnative, invasive species including European beachgrass, iceplant, yellow bush lupine, and annual grasses. Trend information and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

#### South Spit Eel River Population

On the south side of the Eel River mouth, this population occurs on an area owned and managed by the Wildlands Conservancy, encompassing approximately 1.5 ac (0.6 ha) of occupied beach layia habitat and 11,307 plants as recorded in 2017 (Service 2017, unpublished data). It is likely that beach layia occurs in other areas of the property, although additional survey data do not yet exist. The area harbors nonnative, invasive European beachgrass that is reducing the availability of open sandy areas for beach layia to persist.

#### McNutt Gulch Population

This population was discovered in 1987, on private property near the mouth of McNutt Gulch. Varied numbers of plants have been recorded, ranging from 200 to 500 plants (CNDDDB 2017; Imper 2018, pers. comm.), although a complete survey has not yet occurred. The occupied area is estimated to be less than 1 ac (0.4 ha) (Imper 2018, pers. comm.). A comparison of current and historical aerial photos indicate encroachment of European beachgrass. At this time, there

is no beach layia trend information available.

#### Mouth of Mattole River Population

This is the southern extent of the known beach layia populations within Humboldt County. This population occupies approximately 27 ac (11 ha) within part of the King Range National Conservation Area and was estimated to include 3.1 million individuals in 2017 (Hassett 2017, pers. comm.). The area is owned and managed by BLM and is located 35 mi (56 km) south of the entrance to Humboldt Bay. Monitoring data available from 2017 indicate this population had a spike in abundance that year compared to the previous year (estimated to be 725,000 individuals) that correlates to an increase in precipitation (Hassett 2017, pers. comm.).

#### Point Reyes Population

The next known population of beach layia to the south is located in Marin County, 200 mi (322 km) south of Humboldt Bay, in the dunes between Kehoe Beach Dunes and the Point Reyes lighthouse at Point Reyes (Service 1998, p. 44; figure 11 in the SSA report). This large dune system contains approximately 146 ac (59 ha) of dunes occupied by beach layia within 14 geographically concentrated areas, based on mapping conducted since 2001 (Point Reyes 2010, unpaginated). However, some of those areas were no longer occupied in 2017 (Goldsmith 2017, pers. obs.). The population was estimated to be 2.7 million in 2017, although varying levels of survey intensity over the years hamper our ability to track population trends (Parsons 2017, pers. comm.). However, sampling conducted from 2015–2017 in the Abbots Lagoon area, which includes recently restored areas, estimate increasing abundance (Parsons 2017, pers. comm.), which also correlates with an increase in precipitation. Restoration is ongoing and includes removal of nonnative, invasive European beachgrass and iceplant, which occur at various densities throughout the 14 subpopulations (Parsons 2017, pers. comm.).

#### Asilomar State Beach Population

The northern-most extant population in Monterey County was previously thought to be extirpated but was rediscovered in 1990 (Service 1998, p. 44). Since the time of the first survey effort in 1994, in which 192 plants were found, subsequent survey efforts found the abundance to remain relatively static within the same geographical footprint (Service 2011, p. 22; Gray

2017, pers. comm.). In 2017, the occupied beach layia habitat consisted of a sparse layer of native dune mat vegetation with no presence of nonnative, invasive species (Dorrell-Canepa 2017, pers. comm.), and the population appears consistently present when climate conditions are favorable (Gray 2018, p. 3). Monitoring is ongoing. Counts of this population from 2017 total 1,541 plants within 0.17 ac (688 square meters) (Gray 2017, pers. comm.); this 2017 count is the highest on record for this population, possibly correlated with the high amount of rainfall during the germination period. Additional survey results include total counts of 287 plants in 2019, 442 plants in 2020, and 54 plants in 2021 (Allen 2021, pers. comm.), noting the lower counts since 2000 coincide with drought conditions. Overall, this population appears to be stable given its consistent year-to-year presence and relative protection from threats, including accounting for the expected lower count numbers detected during drought conditions/years.

#### Indian Village Dunes Population

The second of three populations in Monterey County, the Indian Village Dunes population occurs on restored dune habitat owned by the Pebble Beach Company. The most recent survey efforts for this population include information for 2009 (1,783 plants), 2017 (1,200 plants), and 2018 (199 plants), the latter of which is 83 percent lower plant abundance than what was expressed during the 2017 monitoring efforts (Dorrell-Canepa 2018, pers. comm.). The overall area where the species occurs is approximately 0.55 ac (0.2 ha) (Johns 2009, entire). Drought conditions existed during 2018, which may have contributed to a lower abundance during that year; however, with the absence of long term data, correlations with covariates related to population trends are not possible to make with certainty. No additional information on distribution and abundance trends is available from 2019 to present. This area is preserved through a conservation easement, although there is no management plan, funding, or requirement for additional monitoring or restoration work. Given the unknowns surrounding the population's current abundance, additional surveys and possibly recovery efforts are warranted.

#### Signal Hill Dunes Population

This southern-most population within Monterey County is located less than 1 mi (1.6 km) south of the Indian Village Dunes population and is also owned by

Pebble Beach Company. No recent survey information exists. The best available information is from a 2001 survey effort indicating plants occurring in five semi-isolated areas (Zander Associates 2001, p. 7), likely encompassing less than 1 ac (0.4 ha). No information is known regarding adequacy of the area to meet the species' resource needs.

#### Vandenberg SFB Population

The southern-most population of beach layia occurs on Vandenberg SFB in Santa Barbara County, separated by a distance of approximately 235 mi (378 km) from the Signal Hill Dunes population. This area receives less annual rainfall than the Central and North Coast Ecoregions (*i.e.*, 14 in (36 cm) as compared to 20 in (51 cm) and 38 in (96 cm), respectively) (NOAA 2017). Although surveys do not occur annually, information is available for 2012, 2016, 2017, and 2019 for all known occupied habitat. The most recent (2019) census includes both acreage occupied and abundance information, resulting in 2.8 ac (1.1 ha) and 11,902 individual plants, indicating a 43 percent increase in population abundance compared to 2017 survey information (ManTech SRS Technologies, Inc. 2020, pp. 46–47). Due to varying levels of survey effort, there is no beach layia population trend information for this entire population, although the number of beach layia within a restoration area on the south side of the Vandenberg SFB demonstrates wide fluctuations in population size from year to year, which is often correlated to the amount of rainfall (see table 4 in the SSA report). Although restoration of beach layia habitat on Vandenberg SFB has occurred and is expected to continue into the future, it is highly stabilized due to the presence of nonnative, invasive species, including iceplant, European beachgrass, and veldt grass (*Ehrharta erecta*) (Schneider and Calloway 2017, p. 14; ManTech SRS Technologies, Inc. 2020, p. 49), thus reducing the open sandy areas that beach layia relies on.

#### Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. “Species” is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when

mature (16 U.S.C. 1532(16)). 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 must consider these same five factors in downlisting a species from endangered to threatened. Under our regulations at 50 CFR 424.11(c) and (d), we may downlist a species if, after a review of the species’ status, the best available scientific and commercial data indicate that the species no longer meets the definition of an endangered species, but that it meets the definition of a threatened species.

For the purposes of this analysis, we evaluate whether or not beach layia meets the Act’s definition of an “endangered species” or a “threatened species,” based on the best scientific and commercial information available. 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 directly affect 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—with regard to 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 and 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 with regard to 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 Act’s 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.

In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act. Our analysis includes examining: (1) The threats at the time of listing in 1992 (or if not present at the time of listing, the

status of the threat when first detected); (2) conservation actions that have been implemented to meet the downlisting criteria (see also Recovery and Recovery Plan Implementation, below) or that otherwise mitigate the threat; (3) the current level of impact that each threat may have on the species or its habitat; and (4) the likely future impact of threats on beach layia.

As stated previously, at the time of listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly OHV activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts; thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species subsequently demonstrating positive responses in abundance. Additionally, significant areas have been set aside as preserves, conservation areas, and conservation easements.

This current analysis considers the beneficial influences on beach layia, as well as the potential risk factors (*i.e.*, threats) that are either remaining or new and could be affecting beach layia now or in the future. In this rule, we will discuss in detail only those factors that could meaningfully impact the status of the species. The primary risk factors affecting beach layia are the present and threatened modification or destruction of its habitat from overstabilization/competition with invasive species (Factor A from the Act), modification of its habitat from changing climate conditions (Factor E), modification of its habitat from human-influenced erosion/high level of disturbance (*e.g.*, recreation) (Factor A), and modification of its habitat from vertical land movement/shoreline erosion (*i.e.*, varying levels of uplift and subsidence, as described below) (Factor A). Additional threats to the species include development (Factor A) and herbivory/disease (Factor C); however, our analysis shows that while these threats may be impacting individual beach layia plants, they are not having species-wide impacts. For a full description of all identified threats, refer to chapter 8 of the SSA report (Service 2018, pp. 38–48).

#### *Overstabilization/Competition With Invasive Species*

Areas described as overstabilized in this document (and discussed in detail

in section 8.2.1 of the SSA report (Service 2018, pp. 41–43)) have high vegetation cover and restricted sand movement either due to presence of nonnative, invasive species or presence of species (native or nonnative) that move in after an area is stabilized by invasive species. Overstabilization caused by invasive species, as defined here, is a different ecological process from natural succession in which native vegetation changes over time from the semi-stable dune mat community to more stabilized communities. Both overstabilization and natural succession have a negative impact on the abundance of beach layia because the species requires open sand to colonize an area (see *Ecology, Habitat, and Resource Needs of Beach Layia*, above). At this time, the best available information indicates that large portions of the range of beach layia have been made unsuitable by overstabilization and competition with both native and nonnative, invasive species (Service 2017, pp. 41–43). However, dune systems that are naturally succeeding often still contain areas of semi-stable dunes—although they may shift over time—that are suitable for beach layia.

One population—the Freshwater Lagoon Spit—is the only beach layia population that is currently impacted by stabilization caused by native species, *i.e.*, red fescue (Samuels 2017, pers. comm.). No measures are in place to address the stabilization effects.

The remainder of beach layia's range is subject to past introduction and invasion of its habitat by a variety of nonnative, invasive plant species (Service 1998, p. 45), which is one reason why the species was listed as an endangered species (57 FR 27848; June 22, 1992). These nonnative species adversely affect the long-term viability of coastal dune plants, including the entire distribution of beach layia (with the exception of the Freshwater Lagoon Spit population, as described above), through either direct competition for space (56 FR 12318, March 22, 1991, p. 12323); stabilization of the dunes (56 FR 12318, March 22, 1991, p. 12318); or, in some cases, enrichment of the soils, which then stimulate invasion by other aggressive species (Maron and Connors 1996, p. 309; Pickart *et al.* 1998, pp. 59–68). Nonnative, invasive species are currently present at all populations throughout the species' range, although to a lesser degree at the Lanphere Dunes, Ma-le'l North, and Ma-le'l South subpopulations; the Mouth of Mattole River population; and Asilomar State Beach and Indian Village Dunes populations due to restoration activities.

The most common invasive species (European beachgrass, iceplant, yellow bush lupine, and ripgut brome) in dune systems throughout the range of beach layia are described in section 8.2.1.1 of the SSA report (Service 2018, pp. 42–43). The high level of invasion throughout the range of beach layia suggests these taxa will continue to invade beach layia habitat (*i.e.*, invasive plants occur at varying densities within and adjacent to all extant populations), necessitating routine and long-term management actions. Many of the invasive plants have been mapped within the various dune systems occupied by beach layia (Johns 2009, p. 24; Point Reyes 2015, p. i; Mantech SRS Technologies 2018, p. 1), and there have been efforts for their removal or control (Service 2011, p. 10; Point Reyes 2015, p. 105; Mantech SRS Technologies 2018, p. 1). However, much potentially suitable habitat for beach layia remains to be restored, as identified in the 1992 recovery plan (*i.e.*, the portion of the species' range where the majority of occurrences are including the Mouth of the Mad River, the greater part of the North and South Spits of Humboldt Bay, Elk River Spit, the North and South Spits of the Eel River, McNutt Gulch, as well as Point Reyes, Signal Hill Dunes, and Vandenberg SFB (recovery criterion 2, see section 11.0 in the SSA report)), in addition to routine maintenance to control this threat into the future.

Overall, overstabilization and competition with native or nonnative, invasive species are reducing the availability of sandy soils with sparse vegetative cover, causing beach layia throughout its range to compete for open sandy space, sunlight, and rainfall during its winter germination period. Efforts at some locations to remove invasive species (such as, but not limited to, European beachgrass, iceplant, yellow bush lupine, and ripgut brome) that are adversely affecting resources needed by beach layia are reducing these negative influences and thus have improved the species' current resiliency at many populations. However, the ability of land managers to continue manage the ongoing threat of invasive species into the future is uncertain.

#### *Changing Climate Conditions*

Changes in weather patterns have been observed in recent years and are predicted to continue (Frankson *et al.* 2017, p. 1). Changes can include extreme events such as multi-year droughts or heavy rain events (Frankson *et al.* 2017, pp. 2–5). All of these have the potential to remove, reduce, and degrade habitat, as well as remove

individual plants, reduce germination and survival rates, and reduce fecundity. The best available scientific and commercial information at this time does not indicate how historical changes in climate may have affected beach layia, although recent drought conditions have had a negative impact on population size (BLM 2016a, p. 6; ManTech SRS Technologies 2016, p. 29).

The best available information indicates that recent drought conditions (2012–2016, 2018, 2020, and currently in 2021) negatively influence the abundance of beach layia (*e.g.*, lack of rainfall for germination, reduced fecundity, desiccation during dry periods in the growing season) across the species' range (*e.g.*, BLM 2016a, p. 6; BLM 2014b, p. 16; Pickart 2017, pers. comm.; Gray 2017, pers. comm.; ManTech SRS Technologies 2018, p. 9). Following the 2012–2016 drought period, a subsequent increase in abundance was seen in 2017, corresponding with the increase in rainfall at the end of this multi-year drought period, indicating the seedbank for the species has some ability to withstand multi-year droughts. However, at this point in time, the full longevity of the seedbank is unknown; therefore, it is impossible to predict whether the species could withstand even longer drought periods or whether drought conditions could reach a point at which the seedbank would no longer be viable. All that can be reasonably concluded from the available information is that multi-year droughts have a negative effect on beach layia abundance, reducing above-ground vegetative growth, and that the seedbank for the species appears to be able to withstand at least 4 years of consecutive drought and then regenerate new vegetative growth once more normal rainfall patterns return (noting a tendency for the species to experience a spike in abundance following a drought).

The Intergovernmental Panel on Climate Change (IPCC) states it is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). We used the California Climate and Hydrology Change Graphs, a graphing tool that presents climate and hydrology data from the California Basin Characterization Model (BCM) dataset (Flint *et al.* 2013, entire), to analyze the potential impact of drought on beach layia in the future. Four future climate scenarios demonstrate a range of precipitation and temperatures projected by the 18 scenarios available from the BCM. We chose to use the

climatic water deficit calculations because they take into account changes in air temperature, solar radiation, and evapotranspiration, and can be used as an estimate of drought stress on plants (Stephenson 1998, p. 857).

There are large uncertainties with respect to future precipitation levels; some scenarios predict a hot dry future, while others predict a hot wet future. While climatic water deficit magnitudes vary across the models, the trends are consistent in that all projections indicate increasing values. Climatic water deficit values, both historical (1931–2010) and projected (2021–2050), are higher in watersheds in the Central and South Coast Ecoregions. The South Coast Ecoregion has the highest values and is therefore considered to be the most vulnerable to stress caused by drought, followed by the Central Coast Ecoregion, and then the Point Reyes population at the southern end of the North Coast Ecoregion. The three watersheds in Humboldt County (which encompass all of the North Coast Ecoregion populations except Point Reyes) are least likely to be stressed by drought, both currently and into the future, but the trend in climatic water deficit is still increasing. See section 8.2.2.1 of the SSA report for additional discussion regarding impacts associated with drought.

While no definitive conclusions can be drawn about the potential for drought alone to result in permanent loss of beach layia populations, a compounding factor with changing climate conditions is the relationship to invasive plant species. Many of the invasive species that negatively affect beach layia or its habitat, such as European beachgrass and iceplant, are drought tolerant (Hertling and Lubke 2000, pp. 522–524; Hilton *et al.* 2005, pp. 175–185; Earnshaw *et al.* 1987, pp. 421–432). During a multi-year drought, it is possible that invasive species could persist and spread into areas where beach layia declined, resulting in less open space habitat for germination of beach layia when a sufficient amount of rainfall returns (assuming the seedbank survives).

The high level of abundance of beach layia in 2017 suggests that the potential for invasive species to take over habitat and exclude beach layia regeneration is not a significant threat, at least for drought periods up to 4 years in duration. However, the likelihood of the increased duration and intensity of drought into the future increases the potential for this outcome, which could be particularly problematic for those populations in the Central and South Coast Ecoregions.

In addition to drought, rising sea levels caused by changing climate conditions can lead to removal or reduction of habitat, and the removal of individual plants, seedbanks, and whole populations. However, an analysis conducted using representative concentration pathway (RCP) 8.5 and local sea level rise projections for 2050 based on the methodology developed by Kopp *et al.* (2014, pp. 384–393) as presented in *Rising Seas in California* (Griggs 2017, entire) suggests that rising seas are not likely to significantly influence beach layia into the foreseeable future, and it is unknown how changes in sea levels may have affected the species in the past. Likewise, projections for the lower emission scenario indicate that rising seas under RCP 4.5 are not likely to negatively influence beach layia (Griggs 2017, entire). For more information on the analysis conducted on the effects of sea level rise, please refer to section 10.3.2 of the SSA (Service 2017, pp. 52–58).

#### *Erosion/High Level of Disturbance*

Erosion of soil in a dune system can be caused by many factors, and any form of erosion or heavy soil disturbance can result in the removal of beach layia habitat, individual plants, and seedbank. Erosion and disturbance of beach layia habitat discussed in this document is associated with high levels of disturbance caused by pedestrian, equestrian, OHV, and grazing activity.

First, the best available information indicates that trampling from both pedestrian and equestrian activities occur at insignificant levels at most populations throughout beach layia's range, with the possible exception of the Signal Hill Dunes population on the Monterey Peninsula (Service 2011, p. 11), although that current level of impact is unknown. Beach layia has a strong preference for moderately disturbed habitat adjacent to roads and trails (whether pedestrian or equestrian) in what otherwise would be unoccupied habitat (Service 2011, p. 11). Dispersed equestrian use has been allowed at the South Spit Humboldt Bay population since BLM began management of the area in 2002, and beach layia abundance has remained high, suggesting that dispersed equestrian use, at least where large areas of occupied habitat are concerned, is compatible with large populations (Wheeler 2017, pers. comm.).

Second, OHV activity within beach layia habitat across the species' range is significantly reduced since the time of listing. Most occupied habitat is restricted from OHV use with the

exception of five populations in Humboldt County. Beach layia abundance is lower within riding areas as compared to preserved areas that are closed to OHV use and managed to reduce threats to the species (BLM 2016a; BLM 2016b; Hassett 2017, pers. comm.; see also figure 17 in the SSA report). Additionally, within the OHV riding area, beach layia is restricted to the edges of trails, and the remainder of the habitat is overstable and dominated by invasive vegetation. It is possible that the higher beach layia abundance in the protected areas of the study could have more to do with invasive species management than eliminating the direct impacts of OHV use (Wheeler 2017, pers. comm.).

Finally, livestock trampling was identified as a threat when beach layia was listed (57 FR 27848; June 22, 1992). Livestock trampling previously occurred at the Mouth of Mattole River population, but fencing was replaced in 1997, thereby eliminating this threat (BLM 2014a, p. 5). Additionally, livestock were removed from the South Spit Eel River population that occurs on the Wildlands Conservancy Preserve (Allee 2018, pers. comm.). At this time, the only populations that are exposed to livestock are the McNutt Gulch population (Imper 2018, pers. comm.) and some portions of the Point Reyes population (Parsons 2018, pers. comm.). Observations made at Point Reyes suggest that livestock trampling is negatively impacting portions of the population there (Goldsmith 2018, personal observation). The current status of the McNutt Gulch population is unknown.

Overall, the best available scientific and commercial information suggests that human-induced disturbances are not resulting in significant, negative, population-wide or rangewide impacts given most beach layia habitat is under some level of protection and responds well to slight disturbance. However, some risk to the species' viability remains for some populations in the North Coast Ecoregion because of trampling or crushing of individuals plants.

#### *Vertical Land Movement/Shoreline Erosion*

Uplift or subduction (*i.e.*, the geological process that occurs at convergent boundaries of tectonic plates where one plate moves under another and is forced to sink due to gravity into the mantle) both during and between seismic events can affect whether a beach/shoreline is prograding (*i.e.*, advancing toward the sea as a result of the accumulation of waterborne



sediment) or eroding. Vertical land movement (VLM) is site-specific and is influenced by a number of factors. Direction and magnitude differ depending on location, although most areas around Humboldt Bay, including areas near beach layia habitat, are subsiding (Patton *et al.* 2017, pp. 26–27). The San Andreas Fault, which runs along the eastern edge of Point Reyes and runs parallel to the Monterey Peninsula, regularly experiences plate movements. Removal or reduction of both habitat and individual plants can be caused by sea level rise associated with subduction while uplift may counterbalance those effects. Sudden movements associated with earthquakes can cause tsunamis, which have the potential to remove habitat and whole populations in one event.

The portion of shoreline where beach layia occurs at Point Reyes has a high to very high vulnerability index (Pendleton *et al.* 2005, pp. 3, 15), indicating that this population is subject to removal of occupied habitat caused by shoreline erosion. Similarly, the Monterey coastline where beach layia occurs has been shaped by varying levels of uplift and subsidence (Revell Coastal 2016, p. 2–1). The dunes at Asilomar are less vulnerable to erosion compared to those on the northern portion of the peninsula (EMC Planning Group 2015, figure 5). The best available information does not suggest any current or historical VLM or shoreline erosion for the Monterey Peninsula; thus, areas where beach layia occur appear relatively safe. No VLM/shoreline erosion information is available for Vandenberg SFB. While some populations are more at risk than others to lose habitat via VLM based on historical data, coastal dune habitat will always be threatened by the potential loss of large expanses of habitat caused by subduction events or tsunamis.

As with many ecosystems, dunes often undergo periods of cyclic stabilization and rejuvenation (Pickart and Sawyer 1998, p. 4). Rejuvenation events can be the result of changes in relative sea level, which in turn are attributed, at least in the past, to tectonic activity, including tsunamis (such as the following, as cited in Pickart and Sawyer 1998: Vick 1988, Pacific Watershed Associates 1991, Clarke and Carver 1992, and Komar and Shih 1993). Both uplift and subsidence can theoretically trigger reactivation of dunes, with the former potentially building or expanding dunes through increased sediment supply, while the latter can destroy dunes through increased wave action or limit the expansion of new dunes (Pickart and

Sawyer 1998, p. 4). The southern end of the North Spit Humboldt Bay population and the South Spit Eel River population are particularly vulnerable to shoreline erosion (McDonald 2017, pp. 10–13).

#### Current Condition

The estimated abundance of beach layia is currently 30 million plants and the estimated occupied habitat is approximately 595 ac (240 ha). This is an increase of approximately 28 percent for abundance and an increase of approximately 65 percent for occupied habitat since the 2017 5-year review (Service 2011, entire).

All of the threats discussed above have the potential to negatively influence the resiliency of beach layia populations; however, the threat that currently has the greatest negative impact on populations or the species rangewide is over stabilization/competition with invasive species. This threat reduces abundance of beach layia more than any other and has the potential to have significant negative impacts to populations across the range of the species by reducing the amount of open sandy areas with sparse vegetation that it needs. Although habitat has been restored for some populations, the threat of invasive species expanding their presence throughout the species' range is always present, especially because most restored sites are near currently invaded areas, and has the potential to increase if changing climate conditions result in longer duration and higher intensity multi-year droughts. Efforts to remove nonnative or native, invasive species and reverse the effects of over stabilization are ongoing throughout the species' range (Martinez *et al.* 2013, p. 159; BLM 2014b, p. 17; ManTech SRS Technologies 2016, p. 1; California Department of Parks and Recreation (CDPR) 2004, p. 3–14). However, these efforts are time consuming and costly. Some current management plans include restoration for some populations; however, many populations have no plans for restoration, and funding into the future is determined on an annual budgetary basis by CDPR and Vandenberg SFB. Thus, this threat is not considered to be causing a significant negative influence across the entire range of beach layia at this time, but is reasonably likely to in the foreseeable future.

Uncertainties regarding the species' ecology and current impacts (or level of impacts) to beach layia or its habitat include (but are not limited to): Defined timelines for implementation of restoration and ongoing control of

nonnative, invasive species; limiting factors for the populations in Monterey County; seedbank longevity; and the optimal disturbance regime to maximize recovery efforts (see also section 9.1.2 in the SSA report (Service 2018, p. 50)).

#### Future Condition Projections

For the purpose of this rule, we define viability as the ability of the species to sustain populations in the wild over time. This discussion explains how the stressors associated with over stabilization/competition with invasive species, changing climate conditions, erosion/high level of disturbance (*e.g.*, recreation), and vertical land movement/shoreline erosion will influence resiliency, redundancy, and representation for beach layia throughout its current known range using the most likely plausible scenario. The future timeframes evaluated include a range of times that cover a variety of management plans that are expected to last the next 10 to 20 years and predictions for local sea level rise in the future through the year 2050. Thus, foreseeable future for this analysis is a range from approximately 15 to 30 years from now.

Suitable occupied and unoccupied habitat is limited to coastal dune systems that are subject to modification or destruction by over stabilization/competition with nonnative and native invasive species, changing climate conditions (which can result in drought and sea level rise), erosion from various disturbance activities (*e.g.*, recreation), and VLM/shoreline erosion (see section 6.2 in the SSA report (Service 2018, pp. 14–24)). Significant habitat modification in any portion of beach layia's range could lead to reduced population size, growth rate, and habitat quality for the affected population(s), thus resulting in a higher risk level for the species' viability into the future. Although the threats described above are generally spread throughout the species' range, the best available data indicate that the most vulnerable populations, given current and potential future impacts to availability of sparsely vegetated native dune mat habitat subject to periodic disturbance during the dormant season, include:

- *North Coast Ecoregion*—Freshwater Lagoon Spit, portions of North Spit Humboldt Bay (including the Mad River Beach, Bair/Woll, Manila South, and Samoa/Eureka Dunes subpopulations), portions of South Spit Humboldt Bay, Elk River, North Spit Eel River, South Spit Eel River, McNutt Gulch, and unrestored portions of Point Reyes;

- *Central Coast Ecoregion*—Signal Hill Dunes; and
- *South Coast Ecoregion*—Vandenberg SFB.

This includes three of the four largest areas occupied by the species in the North Coast Ecoregion (see table, above). Depending on the severity of the impacts to the resources needed by beach layia, populations or portions thereof could be lost in the future.

Populations in areas where habitat is limited or unsuitable in the future (see section 8.1 in the SSA report (Service 2018, pp. 39–41)) are likely to be more susceptible to threats that continue or worsen in the future, potentially resulting in reduced population(s) size and growth rate. Loss of habitat caused by invasion of nonnative, invasive species is the most prominent negative influence on beach layia into the future.

The populations in the Central and South Coast Ecoregions are at the greatest at risk of declines in abundance in the future based on their small size, limited distribution and expected continued threats in the future, particularly competition with nonnative, invasive species and drought stress. No projected drought trends are available; however, extreme events, including multi-year droughts, are expected to increase in likelihood into the future (Frankson *et al.* 2017, pp. 2–5), and an analysis on climatic water deficit shows an increasing trend throughout the range of the species into the future, particularly those in the Central and South Coast Ecoregions (see section 8.2.2.1 of the SSA report).

Overall, it is likely that the most significant threat to beach layia's resiliency in the future will be continued overstabilization/competition with invasive species and, to a lesser extent, changing climate conditions, erosion/high levels of disturbance, and VLM/shoreline erosion. These threats are likely to result in a reduction in abundance of beach layia throughout its range stemming from removal, reduction, and degradation of habitat, and reduced abundance, such as from reduced germination, fecundity, and survival rates.

Many populations are likely to see a reduction in abundance of beach layia because there are no existing management activities or no management plans that provide long-term assurances that management activities will continue into the future to improve existing suboptimal habitat conditions (*e.g.*, invasive species), especially if the species were to be delisted. Very few populations have been managed in such a way that the natural processes that create habitat for

the species are able to operate unhindered (*i.e.*, Lanphere Dunes and Ma-le'l North and South). The remaining populations are dependent on continued management into the future to improve habitat conditions.

The low abundance and limited distribution of the species in the Central and South Coast Ecoregions make those populations particularly vulnerable to stochastic events, including, but not limited to, drought. It is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). The high likelihood of increased intensity and duration of droughts in California (Frankson *et al.* 2017, pp. 2–5) is expected to negatively influence beach layia populations throughout the species' range because rain is required for germination, but particularly in the Central and South Coast Ecoregions due to high projections of climatic water deficit in those watersheds. A compounding factor in the analysis of drought effects on beach layia is that two of the most common nonnative, invasive species that compete for habitat with beach layia—European beachgrass and iceplant—are both drought-tolerant (Hertling and Lubke 2000, pp. 522–524; Lechuga-Lago *et al.* 2016, pp. 8–9).

#### **Resiliency, Redundancy, and Representation**

To characterize beach layia's viability and demographic risks, we consider the concepts of resiliency, redundancy, and representation, and how the threats may negatively impact the resource needs that it relies on for survival and reproduction. Taking into account the impacts of the most significant threats and the potential for cumulative impacts to the resources that the species needs, our projections for future conditions are that beach layia's ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future. This resiliency is demonstrated by the increased abundance at most populations during a heavy rainfall year (*e.g.*, 2017; table 2 in the SSA report (Service 2018, pp. 22–24)) that followed 4 years of drought conditions. However, this rebound in 2017 did not occur throughout all of the species' range, including at some of the smaller populations.

No significant known genetic differences exist between populations or among ecoregions, per a genetic study that indicates homogeneity across the species range (Baldwin 2006, pp. 72–73), which suggests a low level of ability to adapt to change (representation). Currently, multiple populations

throughout the historical range of the species provide adequate redundancy and a higher outlook of viability in the face of potential catastrophic events.

Of greater concern for beach layia's viability into the future is that the populations in the Central and South Coast Ecoregions are significantly smaller than the populations in the North Coast Ecoregion, thus decreasing the species' representation and redundancy in a large proportion of the species' range if these populations are lost in the future. The smaller abundance and acreage of these populations compared to the populations in the North Coast Ecoregion increases the chances of population loss in the foreseeable future, especially given the likelihood that:

(1) Overstabilization/competition with invasive species is not adequately being addressed (*e.g.*, lack of staff and funding for invasive species control at some locations).

(2) Drought conditions are expected to worsen (continued multi-year droughts that result in reduced annual precipitation levels) across the species' range, but particularly in the Central and South Coast Ecoregions.

(3) Drought conditions can possibly benefit the abundance and spread of drought-tolerant, invasive plants that are already present and adversely impacting the resources that beach layia relies on.

See section 10.3 in the SSA report (Service 2018, pp. 52–59) for additional analysis and discussion of factors influencing the viability of beach layia in the future. Taking into account the impacts of the most significant threats and the potential for cumulative impacts to the resource needs, our projections for future conditions are that beach layia's ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future.

Additionally, multiple populations currently spread across a wide geographic range suggest high redundancy and representation. However, at this time, the populations in the Central and South Coast Ecoregions have lower abundance than the North Coast Ecoregion populations. Even in years with higher than normal abundance numbers, the Central and South Coast Ecoregion populations fall below the recovery goal of 5,000 individuals per population (Service 1998, p. 93). Given the lower abundance compared to the rest of the species' range and the continued threats into the foreseeable future, the species' overall ability to maintain adequate

representation and redundancy into the future is low.

### Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

In 1998, we finalized the Seven Coastal Plants and the Myrtle's Silverspot Butterfly Recovery Plan, which included recovery objectives for beach layia (recovery plan; Service 1998, pp. 43–48). All of the downlisting criteria and a portion of the delisting criteria included in the recovery plan (Service 1998) applied to the entire suite of dune plant species covered by the plan. As such, some interpretation of those criteria may be warranted to account for the specific life history or other circumstances of the species in question. Therefore, we have based our analysis on the intent of the criteria as they relate to beach layia. Based on our review of the recovery plan and the information obtained from the various management activities, surveys, and research that have occurred to date (including some new abundance information available since publication of the proposed rule in the **Federal Register** (85 FR 61684; September 30, 2020)), we conclude that the status of beach layia is improved throughout its range as a result of significant protections to preserve or conserve habitat, along with land use decisions and management activities implemented by many landowners undertaken since the time of listing. See appendix A in the SSA report for a detailed account of existing regulatory mechanisms and voluntary conservation efforts (Service 2018, pp. 75–80). Our analysis indicates that the intent of the downlisting criteria has been met. Our summary analysis of the downlisting criteria follows:

*Downlisting Criterion 1 (addresses Listing Factors A, D, and E): Habitat occupied by the species that is needed to allow delisting has been secured, with long-term commitments and, if possible, endowments to fund conservation of the native vegetation.*

There has been significant improvement in the security of habitat occupied by beach layia since the recovery plan was prepared, including land acquisition by Federal agencies, State and local agencies, and nongovernmental organizations; adoption of local coastal plans under the California Coastal Act; and implementation of management plans that address the needs of the species. Of the estimated 595 ac (240 ha) of dunes habitat currently occupied by beach layia, approximately 91 percent is owned by Federal and State governmental entities or other land owners with existing resource management direction precluding development within sensitive dunes habitat. Despite the fact that not all entities managing beach layia habitat

have been able to demonstrate their ability to continue management into the future, especially if the species were to be delisted, due to the significant amount of occupied dune habitat that is now on protected lands (*i.e.*, long-term commitments of approximately 32 years, including resource management plans that contain a restoration component), and State and Federal mandates to conserve the species as long as it remains listed, we conclude that this recovery criterion has been adequately met.

*Downlisting Criterion 2 (in part, addresses Listing Factors A, D and E): Management measures are being implemented to address the threats of invasive species, pedestrians, and OHVs at some sites.*

The Service, BLM, National Park Service (Redwood National Park, Point Reyes), and several other land managers in the northern portion of the range, and the CDP, Department of Defense, and several other managers in the southern portion of the range have all instituted relevant management policies since the recovery plan was completed or since the species was listed. Those policies have reduced, and in many cases eliminated, the threats to beach layia posed by pedestrians and OHV activity, as well as reduced to a certain degree the threat of native and nonnative, invasive species. Because of the many management measures currently implemented across the range of beach layia to address the threats of pedestrians and OHVs, and the work conducted thus far to address the ongoing threat of invasive species, we conclude that this criterion has been adequately met.

*Downlisting Criterion 3 (in part, addresses Listing Factor E): Monitoring reveals that management actions are successful in reducing threats of invasive, nonnative species.*

Management actions over the past 12 years have reduced the threats from native and nonnative, invasive species, at least into the foreseeable future. Because of these successful invasive species management measures, we conclude that this criterion has been adequately met.

*Downlisting Criterion 4 (in part, addresses Listing Factors A, D and E): Additional restored habitat has been secured, with evidence of either natural or artificial long-term establishment of additional populations, and long-term commitments (and endowments where possible) to fund conservation of the native vegetation.*

Commitments by land managers across beach layia's range, as described under *Downlisting Criterion 1*, above,

have resulted in secured habitat (*i.e.*, protected from development, although native or nonnative, invasive species continue to reduce the availability of sandy soils with sparse vegetative cover) in multiple geographic areas since the recovery plan was completed. These include several protected areas on Federal, State, and local public lands, as well as land acquisition and protection (*e.g.*, conservation easements) by nongovernmental organizations (protections are described in each population description found in section 7.0 of the SSA report (Service 2018, pp. 25–38)). Additionally, restoration has been conducted with a commensurate response by beach layia (*e.g.*, the creation of an Endangered Species Protection Area within the Samoa/Eureka subpopulation, North Spit Humboldt Bay, Point Reyes National Seashore, Vandenberg SFB). As a result, we conclude that this criterion has been adequately met.

#### *Delisting Criteria*

The intent of the delisting criteria has not yet been met for beach layia. The overarching goal for delisting beach layia includes removal of substantially all of the nonnative, invasive plants on the dunes where it occurs and securing written assurance of long-term support for continued management of the dunes, and monitoring (Service 1998, pp. 92–93). The overarching goal is to restore natural processes that have been disrupted by the presence of nonnative, invasive species to dune systems so that beach layia and other native plants adapted to those environments can persist into the future.

#### **Determination of Beach Layia 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 “endangered species” or “threatened species.” The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of “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*

As required by the Act, we considered the five factors in assessing whether the beach layia is an endangered or threatened species throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 5-year review (Service 2011, entire), additional information that became available since the time our 2011 5-year review was completed, and other available published and unpublished information, including information available since publication of the proposed rule (85 FR 61684; September 30, 2020). We also consulted with species experts and land management staff who are actively managing for the conservation of beach layia.

We examined the following threats that may be affecting beach layia: Development (Factor A), herbivory/disease (Factor C), overutilization/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (*e.g.*, recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A). We found no threats associated with overutilization for commercial, recreational, scientific, or educational purposes, such as (but not limited to) collection of plants for scientific research (Factor B). We also considered and discussed existing regulatory mechanisms (Factor D) and voluntary conservation efforts as they relate to the threats that may affect beach layia (summarized within each threat discussion within chapters 8 and 10, and detailed in appendix A, of the SSA report, pp. 75–80).

The most significant factors influencing the viability of beach layia populations at the time of listing were displacement by nonnative, invasive vegetation; recreational uses such as OHV activities and pedestrians; and urban development (57 FR 27848, June 22, 1992; Service 1998, p. 45). At the time of the proposed downlisting rule (85 FR 61684; September 30, 2020) and currently, our analysis indicates that the level of impacts to beach layia and its habitat that placed the species in danger of extinction in 1992 (*i.e.*, human-induced disturbances including OHV activity, agriculture, pedestrians, development, etc.) has substantially been reduced as a result of the

significant commitments made by landowners to conserve lands and institute restoration activities at multiple populations throughout the species’ range. However, the extensive spread of nonnative, invasive vegetation throughout the species’ range remains a significant negative influence on the viability of the species. Additionally, the ability of the majority of landowners to continue management of habitat for the species into the future is uncertain, particularly if the species were to be delisted.

At the time of the 5-year review (2011) and currently, we have become aware of the potential for anthropogenic climate change to affect all biota, including beach layia. Available information indicates that temperatures are increasing and annual rainfall is reduced during some years within beach layia’s range, resulting in prolonged drought conditions that negatively influence beach layia abundance. Beach layia’s response to these changes should be monitored into the future.

Of the factors identified above, overutilization/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (*e.g.*, recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A) are the most significant threats to the species currently and into the foreseeable future. After review and analysis of the best scientific and commercial information available regarding the threats as they relate to the five statutory factors, we find that this information does not indicate that these threats are affecting individual populations or the species as a whole across its range to the extent that they currently are of sufficient imminence, scope, or magnitude to rise to the level that beach layia is in danger of extinction throughout all of its range. This determination is based on the current estimate of approximately 30 million plants across the range of the species and the approximately two thirds of currently occupied habitat that is restored or partially restored, and because the species is widely distributed along the coast of California.

However, our review of the best available scientific information indicates that, while the overall range has slightly increased since the time of listing (*i.e.*, discovery of the northernmost population—Freshwater Lagoon Spit) and the abundance of the species has increased significantly since the 2011 5-year review, the anticipated trajectory of the identified threats into the foreseeable future is likely to result in a condition whereby the abundance

and density of the species across the majority of its range (including the population stronghold areas in a portion of Humboldt County) are likely to be negatively impacted.

Specifically, the best available information indicates there is a likelihood of population- and rangewide-level impacts to beach layia abundance in the foreseeable future, despite beneficial management actions at some of the populations at this time. Beach layia populations across the species' range are likely to be negatively influenced predominantly from overstabilization/competition with invasive species, in conjunction with predicted drought conditions. Our analysis reveals that one or more threats continue to act on the species at the population level, likely contributing to low abundance in most years that do not experience substantial rainfall. Additionally, there is a lack of range expansion at some small populations (e.g., Asilomar State Beach, Indian Village Dunes, and Signal Hill Dunes populations), likely contributing to insufficient recruitment necessary for stable or, ideally, increasing populations. With respect to the remaining populations that are experiencing OHV and other recreation activities (noting this threat is substantially reduced with the exception of a few areas in the North Coast Ecoregion), the existing regulatory mechanisms are likely insufficient to manage the beach layia habitat specifically at the Signal Hill Dunes population. Overall, some disturbance appears compatible with large populations (Wheeler 2017, pers. comm.)

Thus, after assessing the best available information, we conclude that beach layia is not currently in danger of extinction, but it is likely to become in danger of extinction within the foreseeable future throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), 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" (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 *Center for Biological Diversity*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (i.e., endangered). In undertaking this analysis for the beach layia, 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 is endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now, while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the beach layia to warrant its classification as a threatened species throughout all of its range. We examined the following threats: Overstabilization/competition with invasive species, changing climate conditions, erosion/high level of disturbance (e.g., recreation), and vertical land movement/shoreline erosion, including cumulative effects. While some of these threats currently exist throughout the range of the species (e.g., the presence of invasive species, recreational impacts), it is the anticipated future increase in overstabilization/competition with invasive species, exacerbated by climate change-influenced drought that is driving the threatened status of the species.

The best scientific and commercial data available indicate that the time horizon on which this heightened threat

to beach layia from drought-influenced overstabilization/competition with invasive species, and beach layia's negative response to that heightened threat, is likely to occur in the foreseeable future. In addition, the best scientific and commercial data available do not indicate that this heightened threat is more immediate in any portions of the species' range. Therefore, we determine that the beach layia is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Therefore, on the basis of the best available scientific and commercial information, we are reclassifying beach layia as a threatened species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that beach layia does not meet the definition of an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act, but does meet the definition of a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act. Therefore, we are downlisting beach layia from an endangered species to a threatened species, and this change will be reflected on the List of Endangered and Threatened Plants.

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 classified, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species being listed. Because we are listing this species as a threatened species, the prohibitions in section 9 will not apply directly. We are, therefore, adopting a set of regulations to provide for the conservation of the species in accordance with the Act's section 4(d), which also authorizes us to apply any of the prohibitions in the Act's section 9 to a threatened species. The 4(d) rule, which includes a description of the kinds of activities that will or will not constitute a violation, complies with our July 1, 1994, policy.

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

### Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to us when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a 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 species-specific 4(d) rule that is designed to address beach layia’s specific threats and conservation needs. Although the statute does not require us to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of beach layia. As discussed above under Determination of Beach Layia Status, we conclude that beach layia is no longer at risk of extinction but is still likely to become so in the foreseeable future, primarily due to the identified threats of overstabilization/competition with invasive species and drought conditions, in addition to loss of habitat and plants at some locations from recreational disturbance and erosion (e.g., shoreline erosion, vertical land movement). The provisions of this 4(d) rule promote conservation of beach layia by making it unlawful to remove and reduce to possession beach layia from Federal land. The provisions of this rule are one of many tools that we will use to promote the conservation of the beach layia.

### Provisions of the 4(d) Rule

This 4(d) rule enhances the conservation of beach layia by prohibiting detrimental activities and allowing activities that benefit the species.

This 4(d) rule provides for the conservation of beach layia by prohibiting, for any person subject to the jurisdiction of the United States, the following activities, except as otherwise authorized or permitted: Import or export; removing and reducing to possession beach layia from areas under Federal jurisdiction; maliciously damaging or destroying the species on any area under Federal jurisdiction; or removing, cutting, digging up, or damaging or destroying the species on any area under Federal jurisdiction in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; delivering, receiving, carrying, transporting, or shipping the species in interstate or foreign commerce in the course of a commercial activity; and selling or offering for sale the species in interstate or foreign commerce.

As discussed above under Determination of Beach Layia Status,

several factors are affecting the status of beach layia. A range of activities have the potential to impact the beach layia, including the loss of habitat and plants at some locations from recreational disturbance. Regulating these activities will help preserve the species’ remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that the Service Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. The regulations also state that the permit will be governed by the provisions of 50 CFR 17.72 unless a species-specific 4(d) rule applicable to the plant is provided at 50 CFR 17.73 to 17.78. We interpret that second sentence to mean that permits for threatened species are governed by the provisions of 50 CFR 17.72 unless a species-specific 4(d) rule provides otherwise. On August 27, 2019, we published a final rule (84 FR 44753) revising 50 CFR 17.71 to remove the prior default extension of most of the prohibitions for activities involving endangered plants to threatened plants. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in 50 CFR 17.72, or require that every 4(d) rule spell out any permitting provisions that apply to that species. To the contrary, we anticipate that permitting provisions will generally be similar or identical for most species, so applying the provisions of 50 CFR 17.72 unless a 4(d) rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings 50 CFR 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, which states that a permit will be governed by the provisions of 50 CFR 17.32 unless a species-specific 4(d) rule applicable to the wildlife, appearing at 50 CFR 17.40 to 17.48, provides otherwise. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or other activities consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

The Service recognizes 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 the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency which 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 beach layia that may result in otherwise prohibited activities without additional authorization.

We recognize the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species, and therefore satisfy permit requirements under the Act. We intend to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities, providing the activities do not represent a threat to the species' survival in the wild. In this regard, seeds of cultivated specimens will not be regulated provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container.

Nothing in this 4(d) rule changes 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 beach layia. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate.

### III. Summary of Comments and Recommendations

#### Peer Reviewer Comments

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of seven

appropriate specialists regarding the SSA report. We received responses from four specialists, which informed the SSA report and this final rule. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, conclusions, and analyses. The peer reviewers have expertise in the biology and ecology of the species, including the threats that the species faces.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the beach layia. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report and final rule. Peer reviewer comments are incorporated into the SSA report and this final rule as appropriate; no significant, substantive issues were identified with our analysis and SSA report.

#### Public Comments

We received one public comment in response to the proposed rule. We reviewed this comment for substantive issues and new information regarding the proposed rule. A summary of the substantive issues raised in the comment follows.

(1) *Comment:* The commenter questioned whether the 1998 recovery plan is working sufficiently, or if there are plans to write a new recovery plan.

*Our Response:* Recovery plans provide a road map with detailed site-specific management actions for private, Tribal, Federal, and State cooperation in conserving listed species and their ecosystems. A recovery plan provides guidance on how best to help listed species, including beach layia, to achieve recovery, but it is not a regulatory document. At this time, we do believe the current recovery plan has been successful for addressing beach layia's needs, as demonstrated by the various recovery actions that have been implemented to date (see Recovery and Recovery Plan Implementation, above). We currently have no plans to revise the existing recovery plan, but we do intend to continue to evaluate the species' status into the future via periodic status reviews to assess ongoing conservation efforts and ensure that species protections are appropriately classified under the Act.

(2) *Comment:* The commenter questioned if it is the Service's goal to delist beach layia in the future.

*Our Response:* As with all listed species, the Service's ultimate goal is to recover the species to the point that it no longer requires the protections of the

Act and can be delisted. We have worked, and continue to work, cooperatively with landowners across beach layia's range to further the conservation of the species, with the overarching goal that when the species no longer meets the Act's definition of a threatened species, we can propose to remove beach layia from the List of Endangered and Threatened Plants. Key to that assessment will be ensuring that this conservation-reliant species has management commitments in place to address the threat of nonnative invasive species into the future.

(3) *Comment:* The commenter asked what caused the threats to beach layia to be reduced compared to the level of impacts identified when it was listed in 1992.

*Our Response:* The reduction in threats impacting beach layia is due to the conservation efforts implemented by Federal, State, local, and private entities. Examples of the conservation efforts are the removal of both native and nonnative, invasive species from many populations across the species' range, which have expanded suitable habitat for beach layia and appear to be the most beneficial conservation action for the species. Also, protecting lands from development has contributed to the reduction in threats. Protected lands include a significant amount of occupied dune habitat that receive long-term commitments of approximately 32 years, including resource management plans that contain a restoration component to address some threats, and State and Federal mandates to conserve the species as long as it remains listed. Additionally, prohibiting OHV use in some of the areas supporting beach layia populations has reduced the overall level of both short-term and long-term impacts from these recreational activities. For more information, see the discussions under Recovery and Recovery Plan Implementation and Determination of Beach Layia Status, above.

(4) *Comment:* The commenter requested that we develop and display dynamic, interactive maps in proposed rules to compare pre-listing status and current species status. For example, the commenter suggested that it would help the public to see beach layia population "numbers" at the time of listing compared to current information.

*Our Response:* At this time, requirements and limitations for publication in the **Federal Register** prevent interactive mapping tools for proposed and final rules. However, detailed qualitative and quantitative historical and current information on species abundance and distribution is

available in the SSA report (Service 2018, chapters 5 and 6, pp. 13–38). The SSA report and supporting information are available on the internet at <https://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042.

(5) *Comment*: The commenter inquired about the cost to the public of promulgating and implementing the beach layia proposed downlisting rule.

*Our Response*: Section 4(b)(1)(A) of the Act requires us make listing determinations “solely on the basis of the best scientific and commercial data available.” The Act does not allow us to consider the economic or other impacts of listing, whether over the short term, long term, or cumulatively. Therefore, we may not consider information concerning economic or management (implementation) impacts when making listing determinations.

**IV. Required Determinations**

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v.*

*Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because there are no Tribal lands or interests within or adjacent to beach layia habitat.

**References Cited**

A complete list of all references cited in the SSA report and this rulemaking is available on the internet at <https://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042 and upon

request from the Field Supervisor, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this final rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and the Arcata Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, amend the table in paragraph (h) by revising the entry for “*Layia carnosa*” under FLOWERING PLANTS in the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**  
 \* \* \* \* \*  
 (h) \* \* \*

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
<i>Layia carnosa</i> .....	Beach layia .....	Wherever found .....	T	57 FR 27848, 6/22/1992; 87 FR [insert <b>Federal Register</b> page where the document begins], 3/31/2022; 50 CFR 17.73(b). <sup>4d</sup>
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (b) to read as follows:

**§ 17.73 Special rules—flowering plants.**

\* \* \* \* \*

(b) *Layia carnosa* (beach layia).

(1) *Prohibitions*. The following prohibitions that apply to endangered plants also apply to *Layia carnosa* (beach layia). Except as provided under paragraph (b)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to

commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(iii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any

State law or regulation or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(v) Sell or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions*. The following exceptions from prohibitions apply to beach layia:

(i) The prohibitions described in paragraph (b)(1) of this section do not



apply to activities conducted as authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of beach layia that are covered by an approved cooperative agreement to carry out conservation programs.

(iii) You may engage in any act prohibited under paragraph (b)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container.

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022-06740 Filed 3-30-22; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 140501394-5279-02; RTID 0648-XB887]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2022 Recreational Accountability Measure and Closure for Blueline Tilefish in the South Atlantic Region

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for recreational blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined

that recreational landings for blueline tilefish will reach the recreational annual catch limit (ACL) by July 26, 2022. Therefore, NMFS will close the recreational sector for blueline tilefish in the South Atlantic EEZ at 12:01 a.m., local time, July 26, 2022, and it will remain closed until the 2023 recreational fishing season begins on May 1, 2023. This closure is necessary to protect the blueline tilefish resource.

**DATES:** This rule is effective 12:01 a.m., local time, July 26, 2022, until 12:01 a.m., local time, January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Region, telephone: 727-824-5305, email: *mary.vara@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS implemented management measures for blueline tilefish in Amendment 32 to the FMP (Amendment 32) (80 FR 16583; March 30, 2015), including current recreational AMs. Abbreviated Framework 3 to the FMP, which was implemented in August 2020 (85 FR 43145; July 16, 2020), set the recreational ACL for blueline tilefish at 116,820 lb, (52,989 kg), round weight. Under 50 CFR 622.193(z)(2)(i), NMFS is required to close the recreational sector for blueline tilefish when the recreational ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register.

NMFS has determined that recreational landings for South Atlantic blueline tilefish will reach the recreational ACL by July 26, 2022. Accordingly, the recreational sector for South Atlantic blueline tilefish will close effective at 12:01 a.m., local time, July 26, 2022, until 12:01 a.m., local

time, January 1, 2023, the start of the next fishing year. However, as described in 50 CFR 622.183(b)(7), the recreational sector for blueline tilefish is also closed from January 1 through April 30, and September 1 through December 31, each year. Therefore, after the effective date of the closure on July 26, 2022, the recreational sector may not harvest blueline tilefish in the South Atlantic EEZ until May 1, 2023.

During the closure, the bag and possession limits for blueline tilefish in or from the South Atlantic EEZ are zero.

#### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(z)(2)(i), issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the blueline tilefish recreational sector have already been subject to notice and public comment, and all that remains is to notify the public of the date of the recreational closure. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to protect the South Atlantic blueline tilefish resource. Additionally, providing as much advance notice to the public of this closure allows charter vessel and headboat businesses that fish for blueline tilefish to prepare for the rest of the fishing season and to schedule or reschedule trips for their clients and to maximize opportunities for their business revenues and profits.

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

Dated: March 25, 2022.

**Ngagne Jafnar Gueye,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022-06712 Filed 3-28-22; 8:45 am]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 87, No. 62

Thursday, March 31, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

RIN 3064–ZA31

#### Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Request for information and comment.

**SUMMARY:** The FDIC is soliciting comments from interested parties regarding the application of the laws, practices, rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to merger transactions involving one or more insured depository institution, including the merger between an insured depository institution and a noninsured institution. The FDIC is interested in receiving comments regarding the effectiveness of the existing framework in meeting the requirements of section 18(c) of the Federal Deposit Insurance Act (known as the Bank Merger Act).

**DATES:** Comments must be received by May 31, 2022.

**ADDRESSES:** Commenters are encouraged to use the title “*Request for Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions (RIN 3064–ZA31)*” and to identify the number of the specific question(s) for comment to which they are responding. Please send comments by one method only directed to:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the agency’s website.

- **Email:** [Comments@fdic.gov](mailto:Comments@fdic.gov). Include RIN 3064–ZA31 in the subject line of the message.

- **Mail:** James P. Sheesley, Assistant Executive Secretary, Attention:

Comments—RIN 3064–ZA31, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m. ET.

**Public Inspection:** All comments received will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, or by telephone at 877–275–3342 or 703–562–2200.

**FOR FURTHER INFORMATION CONTACT:** Rae-Ann Miller, Senior Deputy Director, Supervisory Examinations and Policy, Division of Risk Management Supervision, 202–898–3898, [rmiller@fdic.gov](mailto:rmiller@fdic.gov); or Ashby G. Hilsman, Assistant General Counsel, Bank Activities and Regional Affairs Section, Supervision, Legislation and Enforcement Branch, Legal Division, 202–898–6636, [ahilsman@fdic.gov](mailto:ahilsman@fdic.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background Information

Significant changes over the past several decades in the banking industry and financial system necessitate a review of the regulatory framework that applies to bank merger transactions involving one or more insured depository institutions pursuant to the Bank Merger Act.<sup>1</sup> First, more than three decades of consolidation and growth in the banking industry have significantly reduced the number of smaller banking organizations and increased the number of large and systemically-important banking organizations. Second, the FDIC has a responsibility to promote public confidence in the banking system, maintain financial stability, review proposed mergers, and resolve failing large insured depository institutions. Third, the Dodd-Frank Wall Street Reform and Consumer Protection Act

<sup>1</sup> Bank Merger Act, Public Law 86–463, 72 Stat. 129 (1960); Bank Merger Act Amendments of 1966, Public Law 89–356, 80 Stat. 7 (codified as amended at 12 U.S.C. 1828(c)(2018)), available at [fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c](https://www.fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c).

(Dodd-Frank Act) amended the Bank Merger Act to include, for the first time, a financial stability factor. Fourth, and finally, a recent Executive Order instructed U.S. agencies to consider the impact that consolidation may have on maintaining a competitive marketplace. Thus, the FDIC has determined that it is both timely and appropriate to review the regulatory framework and consider whether updates or other changes are warranted.

##### Consolidation in the Banking Sector

The banking sector has experienced a significant amount of consolidation over the last 30 years as shown in Tables 1 through 3. This period of consolidation, fueled in large part by mergers and acquisitions, has contributed to the significant growth of the number of large insured depository institutions, especially insured depository institutions with total assets of \$100 billion or more.

In 1990, there was only one insured depository institution with assets greater than \$100 billion; however, that number had increased to 33 by 2020.<sup>2</sup> Of these 33 insured depository institutions with assets greater than \$100 billion, nine were owned by the eight U.S. bank holding companies designated as Global Systemically Important Banks (U.S. GSIBs), and three were owned by foreign banking organizations designated as foreign Global Systemically Important Banks (foreign GSIBs).<sup>3</sup> While insured depository institutions with total assets of more than \$100 billion comprise less than one percent of the total number of insured depository institutions, they hold about 70 percent of total industry assets and 66 percent of domestic deposits.

Consolidation also has contributed to the economic landscape of insured depository institutions with assets less than \$100 billion. Over the same 30-year period, the number of institutions with assets less than \$10 billion has declined from 15,099 in 1990 to 4,851 in 2020,

<sup>2</sup> Prior to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103–328 (the Riegle-Neal Act of 1994), many states did not permit intra-state branching and interstate branch branching was not permitted. Following the passage of the Riegle-Neal Act of 1994, many bank holding companies chose to consolidate existing bank charters.

<sup>3</sup> See Financial Stability Board, 2020 list of global systemic important banks, available at <https://www.fsb.org/wp-content/uploads/P111120.pdf>.

a reduction of approximately 68 percent.<sup>4</sup> The declining number of smaller insured depository institutions may limit access to financial services and credit in communities, potentially adversely affecting the welfare of the communities' workers, farmers, small businesses, startups, and consumers.

Over this same period, the number of insured depository institutions with assets between \$10 billion and \$100 billion has doubled from 59 in 1990 to 118 in 2020. However, the percentage of total industry assets held by all insured depository institutions with assets less than \$100 billion declined by 68 percent and their percentage of insured deposits held declined by approximately 70 percent.

Several insured depository institutions with assets less than \$100 billion were owned by either a U.S. GSIB or a foreign GSIB. For example, 12 insured depository institutions with assets less than \$10 billion were owned by GSIBs, with six owned by U.S. GSIBs, and six owned by foreign GSIBs. Further, 11 insured depository institutions with assets between \$10 billion to \$100 billion were owned by GSIBs, with four owned by U.S. GSIBs, and seven owned by foreign GSIBs.

TABLE 1—NUMBER OF INSURED DEPOSITORY INSTITUTIONS BY ASSET SIZE

Asset size	Year		
	1990	2005	2020
\$10B–\$50B .....	52	86	102
\$50B–\$100B .....	7	21	16
\$100B–\$250B .....	1	5	20
\$250B–\$500B .....	0	3	8
\$500B–\$700B .....	0	0	1
≥\$700B .....	0	3	4

Source: TFR and Call Reports.

<sup>4</sup> Based on Thrift Financial Reports (TFR) and Consolidated Reports of Condition and Income (Call Report) between 1990 and 2005, the number of institutions with assets less than \$10 billion declined from 15,099 to 8,715, before falling to 4,851 in 2020. Over the same time period, the percentage of industry assets held by those banks declined from 66.4 percent in 1990 to 26.1 percent in 2005, and then to 14.8 percent in 2020. Similarly, the percentage of domestic deposits held by those institutions declined from 73.9 percent in 1990 to 34.2 percent in 2005, and then to 15.4 percent in 2020.

TABLE 2—PERCENTAGE OF INDUSTRY ASSETS HELD BY INSURED DEPOSITORY INSTITUTIONS BY ASSET SIZE

Asset size	Year		
	1990 (%)	2005 (%)	2020 (%)
\$10B–\$50B .....	20.2	16.7	10.5
\$50B–\$100B .....	10.0	13.1	5.3
\$100B–\$250B .....	3.4	7.2	13.3
\$250B–\$500B .....	0.0	11.1	13.9
\$500B–\$700B .....	0.0	0.0	2.5
≥\$700B .....	0.0	25.8	39.8

Source: TFR and Call Report.

TABLE 3—PERCENTAGE OF DOMESTIC DEPOSITS HELD BY INSURED DEPOSITORY INSTITUTIONS BY ASSET SIZE

Asset size	Year		
	1990 (%)	2005 (%)	2020 (%)
\$10B–\$50B .....	18.5	16.6	11.4
\$50B–\$100B .....	6.4	12.2	5.9
\$100B–\$250B .....	1.2	6.4	13.9
\$250B–\$500B .....	0.0	12.8	14.3
\$500B–\$700B .....	0.0	0.0	2.6
≥\$700B .....	0.0	17.8	35.5

Source: TFR and Call Report.

*The Financial Stability Factor in the Bank Merger Act and Large Bank Resolution*

The Dodd-Frank Act made a number of statutory changes aimed at addressing the risks posed by the largest banks, including an amendment to the Bank Merger Act requiring consideration of the risk posed to the stability of the United States banking or financial system of a proposed bank merger.<sup>5</sup> To date, from a financial stability perspective, efforts to improve the resolvability of large banks have focused on GSIBs.<sup>6</sup> As shown above, given the increased number, size, and complexity of non-GSIB large banks, however, a reconsideration by the FDIC of the framework for assessing the financial stability prong of the BMA and focused

<sup>5</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 604(f), 124 Stat. 1376, 1602 (2010) (codified as 12 U.S.C. 1828(c)(5) (2018)), available at <https://www.govinfo.gov/app/details/PLAW-111publ203>.

<sup>6</sup> See Federal Reserve Board and FDIC joint final rules: Resolution Plans Required, 76 FR 67323, (Nov. 1, 2011), available at <https://www.govinfo.gov/content/pkg/FR-2011-11-01/pdf/2011-27377.pdf>, and Tailored Resolution Plan Requirements, 80 FR 59194, (Nov. 1, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-11-01/pdf/2019-23967.pdf>. See also, FDIC final rule, Certain Orderly Liquidation Authority Provisions under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act, 76 FR 41626, (July 15, 2011), available at <https://www.govinfo.gov/content/pkg/FR-2011-07-15/pdf/2011-17397.pdf>.

attention on the financial stability risks that could arise from a merger involving a large bank is warranted.

In particular, the failure of a large insured depository institution would present significant challenges to the FDIC's resolutions and receivership functions and could present a threat to the financial stability of the United States. Insured depository institutions are resolved under the Federal Deposit Insurance Act. For various reasons, including their size, sources of funding, and other organizational complexities, the resolution of large insured depository institutions can present great risk to the Deposit Insurance Fund, as well as extraordinary operational risk for the FDIC. In addition, as a practical matter, the size of an insured depository institution may limit the resolution options available to the FDIC in the event of failure.<sup>7</sup>

In recent history, including the global financial crisis that began in 2008, the most common resolution transactions have involved a purchase and assumption transaction where an acquiring institution takes all or a substantial part of the failed insured depository institution. For example, between 2008 and 2013, there were a total of 489 bank failures, of which 463, or approximately 95 percent, were resolved by the FDIC through purchase and assumption transactions.

While most of these purchase and assumption resolution transactions were for insured depository institutions with assets under \$10 billion, the largest purchase and assumption transaction completed by the FDIC was that of Washington Mutual Bank, which failed on September 25, 2008, with assets of approximately \$307 billion. However, that transaction resulted in a larger and more complex acquirer (JPMorgan Chase & Co.), and the need for the resolution heightened financial turmoil and contributed to concerns about the safety of the financial system. As a result of the systemic concerns arising from the resolution of Washington Mutual Bank, when Wachovia Bank required resolution days later, the FDIC, the Board of Governors of the Federal Reserve System (Board), and the Secretary of the Treasury invoked the systemic risk exception (SRE) to allow the acquisition of Wachovia by another

<sup>7</sup> Although the FDIC has developed a framework of systemic resolution regulations, strategies, and policies and procedures to operationalize its authority to handle the orderly failure of a GSIB or other systemically important financial company under Title II of the Dodd-Frank Act, such a failure would present additional risks for the FDIC and could, depending on the circumstances, also involve failure of a large insured depository institution.

large insured depository institution. At the time that the SRE was granted—the first-ever use of the SRE—Wachovia had total holding company assets of approximately \$800 billion.<sup>8</sup>

#### Recent Executive Order

Additionally, on July 9, 2021, the President signed an Executive Order on Promoting Competition in the American Economy (Executive Order).<sup>9</sup> This Executive Order, in part, instructs U.S. agencies to consider the impact that consolidation may have on maintaining a fair, open, and competitive marketplace, and on the welfare of workers, farmers, small businesses, startups, and consumers. With respect to the banking sector specifically, the Executive Order directs the Attorney General, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, to adopt a plan for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act (BHCA).

#### Conclusion

In light of the significant consolidation in the banking industry over the past three decades, the federal banking agencies requirement to consider financial stability risk under the BMA, the FDIC's responsibilities for the resolution of large insured depository institutions, and the Executive Order, the FDIC is soliciting comments from interested parties regarding the rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to bank merger transactions involving one or more insured depository institutions. The FDIC is interested in receiving comments regarding the effectiveness of the existing regulatory framework in meeting the requirements of the Bank Merger Act.

#### Bank Merger Act Overview

The Bank Merger Act established a framework that required, in general,

<sup>8</sup> While the systemic risk exception was approved, Wachovia Corporation was ultimately acquired by Wells Fargo & Company on an open-institution basis without FDIC assistance. See FDIC, Crisis and Response: An FDIC History, 2008–2013, available at <http://www.fdic.gov/bank/historical/crisis/>.

<sup>9</sup> See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/> and <https://whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.

consent of the responsible agency prior to a merger.<sup>10</sup> With respect to merger transactions solely involving insured depository institutions, the responsible agency is the FDIC if the resulting institution is a state nonmember bank or state savings association, the Federal Reserve Board if the resulting institution is a state member bank, and the Office of the Comptroller of the Currency (OCC) if the resulting institution is a national bank or federal savings association.<sup>11</sup> With respect to any merger transaction involving an insured depository institution and a noninsured institution, the FDIC is the responsible agency notwithstanding the charter of the insured depository institution.<sup>12</sup>

In addition, the Bank Merger Act generally requires that, prior to approving any merger, the responsible agency must (a) ensure that notice of a proposed transaction be published; (b) request a report on competitive factors from the Attorney General of the United States for merger transactions involving nonaffiliates; (c) not approve any proposed merger that would result in a monopoly or produce substantial anticompetitive effects; and (d) consider certain additional factors, including the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, the risk to the stability of the United States banking or financial system, and the effectiveness of any insured depository institution involved in the merger at combatting money laundering.<sup>13</sup>

When assessing the potential anticompetitive effects of the proposed merger, the responsible agency is required to consider whether the merger would substantially lessen competition, tend to create a monopoly, or otherwise be in restraint of trade.<sup>14</sup> In no case may

<sup>10</sup> Bank Merger Act, Public Law 86–463, 72 Stat. 129 (1960); Bank Merger Act Amendments of 1966, Public Law 89–356, 80 Stat. 7 (codified as amended at 12 U.S.C. 1828(c)(2018)), available at [fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c](https://www.fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c).

<sup>11</sup> Pursuant to Title III of the Dodd–Frank Act, all functions of Office of Thrift Supervision relating to federal savings associations were transferred to the OCC, and all functions of the OTS relating to state savings associations were transferred to the FDIC.

<sup>12</sup> 12 U.S.C. 1828(c)(1) and (2). For an uninsured national bank, OCC approval of the bank's application under 12 CFR 5.33 is also required.

<sup>13</sup> 12 U.S.C. 1828(c)(3)–(5) and 1828(c)(11).

<sup>14</sup> All things being equal, the number of competitors in the market for banking products and services can be affected by two different types of transactions: Unaffiliated depository institutions can merge with each other; or depository institutions can be acquired by unaffiliated companies that already own one or more depository institutions. Companies that own or control depository institutions are commonly known as

the responsible agency approve a merger transaction that would result in a monopoly, and the responsible agency may not approve any merger that exhibits anticompetitive effects unless the responsible agency determines “that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.”<sup>15</sup> Further, the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.<sup>16</sup>

In addition to consideration of anticompetitive effects, the Bank Merger Act requires that: “*In every case, [emphasis added] the responsible agency shall take into consideration the financial and managerial resources and future prospect of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system.*”<sup>17</sup> The latter condition—that the responsible agency consider financial stability—was added in 2010 by section 604(f) of the Dodd–Frank Act.<sup>18</sup>

depository institution holding companies and may either be bank holding companies or savings and loan holding companies. Depository institution holding companies are regulated by the Board. Bank holding companies are subject to the BHCA (for companies owning state and national banks, see 12 U.S.C. 1841 *et. seq.*), and savings and loan holding companies are subject to the HOLA (for companies owning savings associations, see 12 U.S.C. 1461 *et. seq.*). It has been through the acquisition of depository institutions by existing depository institution holding companies, or the merger of these holding companies, that a number of depository institutions have come under the common control. The Board, in consultation with the U.S. Department of Justice (DOJ), analyzes the competitive impact of these acquisitions under standards similar to those applicable under the Bank Merger Act. For example, when depository institutions under common control merge, the DOJ and the federal banking agencies have determined that these mergers of affiliates are competitively neutral. Competitive analysis under the Bank Merger Act takes place when unaffiliated depository institutions merge and is performed by the responsible agency.

<sup>15</sup> 12 U.S.C. 1828(c)(5)(B).

<sup>16</sup> 12 U.S.C. 1828(c)(13)(A).

<sup>17</sup> *Id.*

<sup>18</sup> Dodd–Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, sec. 604(f), 124 Stat. 1376, 1602 (2010) (codified as 12 U.S.C. 1828(c)(5) (2018)), available at <https://www.govinfo.gov/app/details/PLAW-111publ203>.

## FDIC and OCC Regulations and Statement of Policy Regarding Bank Mergers

The requirements of the Bank Merger Act are incorporated into 12 CFR part 303 of the FDIC's regulations<sup>19</sup> and into the OCC's regulations at 12 CFR 5.33.<sup>20</sup>

In the FDIC's regulations, subpart A of 12 CFR part 303 provides regulations that are generally applicable for all filings and includes general filing procedures, computation of time, the effect of Community Reinvestment Act (CRA) performance on filing, and the administrative procedures associated with a filing.<sup>21</sup> Subpart D of 12 CFR part 303 provides regulations specifically pertaining to mergers involving an insured depository institution and includes definitions, transactions requiring prior approval, filing procedures, expedited and standard processing procedures, and public notice requirements.<sup>22</sup> Additional guidance on the FDIC's processing of merger transactions is set forth in the FDIC Statement of Policy on Bank Merger Transactions (FDIC Policy Statement).<sup>23</sup>

For those transactions requiring FDIC approval, the FDIC Statement of Policy describes the four factors that the FDIC will consider in its review: Competitive factors, prudential factors, convenience and needs factor, and anti-money laundering record. The FDIC Policy Statement also describes related considerations such as those related to interstate bank merger transactions, interim merger transactions, branch closings, legal fees and other expenses, and trade names. The FDIC Policy Statement, however, does not address the financial stability provisions added to the Bank Merger Act under section 604(f) of the Dodd-Frank Act.<sup>24</sup>

The OCC's regulation, at 12 CFR 5.33, provides a framework for evaluating mergers, which includes the consideration of the risk to financial

stability. 12 CFR 5.33 generally addresses business combinations involving a national bank or federal savings association. Section 5.33(c) covers the licensing requirements for business combinations. The factors the OCC considers in all business combinations, including business combinations under the BMA, are set forth in § 5.33(e)(1)(i), and §§ 5.33(e)(1)(ii) & (iii) provide the additional factors that the OCC considers for business combinations under the Bank Merger Act.

When considering the risk to the stability of the banking or financial system pursuant to a BMA application, the OCC considers six factors: (1) Whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions; (2) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions; (3) whether the combined institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the combined institution, would cause significant risks to other institutions; (4) whether the transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system; (5) whether the transaction would materially increase the extent of cross-border activities of the combining institutions; and (6) whether the transaction would increase the relative degree of difficulty of resolving or winding up the combined institution.<sup>25</sup>

### 1995 Bank Merger Competitive Review Guidelines<sup>26</sup>

In order to expedite the competitive review process required by the BHCA, Home Owners Loan Act (HOLA), and the Bank Merger Act, and to reduce regulatory burden, the DOJ, in consultation with the federal banking agencies, developed the 1995 Bank Merger Competitive Review Guidelines (Guidelines).<sup>27</sup> The Guidelines state that

merger review will rely primarily on the effects of competition in predefined markets determined by the Board. To the extent that the post-merger Herfindahl-Hirschman Index (HHI) does not exceed 1800 or increase by more than 200, the federal banking agencies generally are unlikely to review further the competitive effects of the merger.<sup>28</sup>

However, the Guidelines provide that the federal banking agencies may examine a merger transaction in greater detail if the federal banking agencies believe additional scrutiny is necessary. As part of this further examination under the Guidelines, the federal banking agencies may consider, among other things, whether there is evidence that (a) the merging parties do not significantly compete with one another; (b) rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate; (c) market shares are not an adequate indicator of the extent of competition in the market; (d) a thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services; (e) a credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market; (f) there is actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital purposes; and (g) there is actual competition by non-bank institutions for commercial customers, particularly competition for loans for business startup or working capital purposes.<sup>29</sup>

### Request for Comment

The FDIC is seeking comment on all aspects of the existing regulatory framework that applies to bank merger transactions. In responding to the following questions, the FDIC asks that commenters please include quantitative as well as qualitative support for their responses, as applicable.

<sup>28</sup> The HHI is a statistical measure of market concentration and is also used as the principal measure of market concentration in the Department of Justice's Merger Guidelines. The HHI for a given market is calculated by squaring each individual competitor's share of total deposits within the market and then summing the squared market share products. For example, the HHI for a market with a single competitor would be:  $100^2 = 10,000$ ; for a market with five equal competitors with equal market shares, the HHI would be:  $20^2 + 20^2 + 20^2 + 20^2 + 20^2 = 2,000$ .

<sup>29</sup> Section 2 of the Interagency Guidelines, available at [www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995](http://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995).

<sup>19</sup> 12 CFR part 303, available at <https://www.fdic.gov/regulations/laws/rules/2000-250.html>.

<sup>20</sup> 12 CFR 5.33, available at <https://www.ecfr.gov/current/title-12/chapter-I/part-5>.

<sup>21</sup> See 12 CFR 303.1–303.19.

<sup>22</sup> See 12 CFR 303.60–303.65.

<sup>23</sup> 63 FR 44762, August 20, 1998, effective October 1, 1998; amended at 67 FR 48178, July 23, 2002; 67 FR 79278, December 27, 2002; and 73 FR 8871, February 15, 2008, available at <https://www.fdic.gov/regulations/laws/rules/5000-1200.html>.

<sup>24</sup> The FDIC's Application Procedures Manual provides a non-exhaustive list of quantitative metrics, as well as qualitative factors, to be considered when evaluating the financial stability factor. FDIC Application Procedures Manual: Mergers, available at <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-04-mergers.pdf>.

<sup>25</sup> See, e.g., OCC Conditional Approval No. 1031 (April 6, 2012). See also the "Business Combinations" booklet of the Comptroller's Licensing Manual, available at <https://occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/bizcombo.pdf>.

<sup>26</sup> In September 2020, DOJ sought comment on whether to revise the Guidelines or its competitive analysis of bank mergers. See <https://www.justice.gov/opa/pr/antitrust-division-seeks-public-comments-updating-bank-merger-review-analysis>.

<sup>27</sup> Available at <http://justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>.

*Question 1.* Does the existing regulatory framework properly consider all aspects of the Bank Merger Act as currently codified in Section 18(c) of the Federal Deposit Insurance Act?

*Question 2.* What, if any, additional requirements or criteria should be included in the existing regulatory framework to address the financial stability risk factor included by the Dodd-Frank Act? Are there specific quantitative or qualitative measures that should be used to address financial stability risk that may arise from bank mergers? If so, are there specific quantitative measures that would also ensure greater clarity and administrability? Should the FDIC presume that any merger transaction that results in a financial institution that exceeds a predetermined asset size threshold, for example \$100 billion in total consolidated assets, poses a systemic risk concern?

*Question 3.* To what extent should prudential factors (for example, capital levels, management quality, earnings, etc.) be considered in acting on a merger application? Should bright line minimum standards for prudential factors be established? If so, what minimum standard(s) should be established and for which prudential factor(s)?

*Question 4.* To what extent should the convenience and needs factor be considered in acting on a merger application? Is the convenience and needs factor appropriately defined in the existing framework? Is the reliance on an insured depository institution's successful Community Reinvestment Act performance evaluation record sufficient? Are the convenience and needs of all stakeholders appropriately addressed in the existing regulatory framework? To what extent and how should the convenience and needs factor take into consideration the impact that branch closings and consolidations may have on affected communities? To what extent should the FDIC differentiate its consideration of the convenience and needs factor when considering merger transactions involving a large insured depository institution and merger transactions involving a small insured depository institution? To what extent should the CFPB be consulted by the FDIC when considering the convenience and needs factor and should that consultation be formalized?

*Question 5.* In addition to the HHI, are there other quantitative measures that the federal banking agencies should consider when reviewing a merger application? If so, please describe the measures and how such measures

should be considered in conjunction with the HHI. To what extent should such quantitative measures be differentiated when considering mergers involving a large insured depository institution and mergers involving only small insured depository institutions?

*Question 6.* How and to what extent should the following factors be considered in determining whether a particular merger transaction creates a monopoly or is otherwise anticompetitive?

Please address the following factors:

(a) The merging parties do not significantly compete with one another;

(b) Rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate;

(c) Market shares are not an adequate indicator of the extent of competition in the market;

(d) A thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services;

(e) A credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market;

(f) There is actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital purposes; and

(g) There is actual competition by non-bank institutions for commercial customers, particularly competition for loans for business startup or working capital purposes. With respect to the preceding factors, how and to what extent should the activity of current branches or pending branch applications be considered?

*Question 7.* Does the existing regulatory framework create an implicit presumption of approval? If so, what actions should the FDIC take to address this implicit presumption?

*Question 8.* Does the existing regulatory framework require an appropriate burden of proof from the merger applicant that the criteria of the Bank Merger Act have been met? If not, what modifications to the framework would be appropriate with respect to the burden of proof?

*Question 9.* The Bank Merger Act provides an exception to its requirements if the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the insured depository institutions involved in the merger transaction. To what extent has this

exception proven beneficial or detrimental to the bank resolution process and to financial stability? Should any requirements or controls be put into place regarding the use of this exemption, for example when considering purchase and assumption transactions in a large bank resolution? Are there attributes of GSIB resolvability, such as a Total Loss-Absorbing Capacity (TLAC) requirement, that could be put into place that would facilitate the resolution of a large insured depository institution without resorting to a merger with another large institution or a purchase and assumption transaction with another large institutions?

*Question 10.* To what extent would responses to Questions 1–9 differ for the consideration of merger transactions involving a small insured depository institution? Should the regulations and policies of the FDIC be updated to differentiate between merger transactions involving a large insured depository institution and those involving a small insured depository institution? If yes, please explain. How should the FDIC define large insured depository institutions for these purposes?

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 6, 2021.

**Harrel M. Pettway,**  
Executive Secretary.

**Editorial note:** This document was received for publication by the Office of the Federal Register on March 25, 2022.

[FR Doc. 2022–06720 Filed 3–30–22; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2022–0382; Project Identifier MCAI–2021–01452–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 all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports that passenger door

stop screws were found with missing screw heads. This proposed AD would require repetitive inspections of each passenger door stop screw for any missing screw heads and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by May 16, 2022.

**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 <https://www.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.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0382.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0382; 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.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206-231-3225; email [dan.rodina@faa.gov](mailto:dan.rodina@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2022-0382; Project Identifier MCAI-2021-01452-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 <https://www.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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206-231-3225; email [dan.rodina@faa.gov](mailto:dan.rodina@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 2021-0291, dated December 22, 2021 (EASA AD 2021-0291) (also referred to as the MCAI), to correct an unsafe condition

for all Airbus SAS Model A350-941 and -1041 airplanes.

This proposed AD was prompted by reports that passenger door stop screws were found with missing screw heads. The FAA is proposing this AD to address missing door stop screw heads, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

##### Related Service Information Under 1 CFR Part 51

EASA AD 2021-0291 specifies procedures for repetitive general visual inspections (GVI) of each passenger door stop screw for any missing screw heads, and applicable corrective actions. The corrective actions include replacement of the passenger door stop screw, repair, and follow-up actions (GVI of the adjacent door stop area and surrounding structure for damage, including any broken door stop screws). EASA AD 2021-0291 also specifies procedures for reporting results of the initial inspection to Airbus. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

##### FAA’s Determination

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

##### Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021-0291 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 2021–0291 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0291 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 2021–0291 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 2021–0291. Service information required by EASA AD 2021–0291 for compliance will be available at <https://www.regulations.gov>

by searching for and locating Docket No. FAA–2022–0382 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this proposed AD would affect 27 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
8 work-hours × \$85 per hour = \$680 .....	\$0	\$680	\$18,360

\* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is \$85 per hour. Based on these figures, the FAA estimates the

cost of reporting the inspection results on U.S. operators to be \$2,295, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition screw replacement that would be

required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

**ESTIMATED COSTS OF ON-CONDITION ACTIONS**

Labor cost	Parts cost	Cost per product
1 work-hour × \$85 per hour = \$85 per screw replacement.	\$875 per screw .....	\$960 per screw replacement.

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

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

**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–2022–0382; Project Identifier MCAI–2021–01452–T.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2022.

#### (b) Affected ADs

None.

#### (c) Applicability

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

#### (d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

#### (e) Unsafe Condition

This AD was prompted by reports that passenger door stop screws were found with missing screw heads. The FAA is issuing this AD to address the missing door stop screw heads, which could result in reduced structural integrity of the airplane.

#### (f) Compliance

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

#### (g) 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 2021–0291, dated December 22, 2021 (EASA AD 2021–0291).

#### (h) Exceptions to EASA AD 2021–0291

(1) Where EASA AD 2021–0291 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2021–0291 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2021–0291 specifies to report results of the initial inspection to Airbus within a certain compliance time. For this AD, report inspection results of the initial inspection at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) Where Note 2 of paragraph (2) of EASA AD 2021–0291 specifies using “the instructions from an applicable Airbus Repair Design Approval Form (RDAF)” is acceptable for compliance with the corrective actions, this AD requires using corrective actions approved using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Where paragraph (2) of EASA AD 2021–0291 refers to passenger door stop screws that are “damaged, as defined in the SB” this AD defines damage as broken passenger door stop screws.

(6) Where service information referenced in EASA AD 2021–0291 specifies “a general visual inspection of the adjacent door stop area and surrounding structure (no lining removal required),” for this AD do a general visual inspection for any damage (e.g., broken passenger door stop screws), and repair any damage before further flight using a method approved by the Manager, Large Aircraft Section, 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.

#### (i) Return of Parts

Although the service information referenced in EASA AD 2021–0291 specifies to send broken screws to Airbus, this AD does not include that requirement.

#### (j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the actions of this AD can be performed (if the operator elects to do so), provided no passengers are onboard.

#### (k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: [9-AVS-AIR-730-AMOC@faa.gov](mailto: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, Large Aircraft Section,

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 (k)(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.

#### (l) Related Information

(1) For EASA AD 2021–0291, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0382.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225; email [dan.rodina@faa.gov](mailto:dan.rodina@faa.gov).

Issued on March 24, 2022.

**Lance T. Gant,**

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

[FR Doc. 2022–06601 Filed 3–30–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2022–0387; Project Identifier AD–2021–01225–R]

RIN 2120–AA64

#### Airworthiness Directives; Bell Textron Inc., Helicopters

**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 Bell Textron Inc., Model 212, 412, 412CF, and 412EP helicopters. This proposed AD was prompted by a report of a cracked check valve. This proposed AD would require inspecting certain engine oil and fuel check valves, and depending on the results, repetitively inspecting and removing the check valve from service. This proposed AD would also prohibit installing affected engine oil and fuel check valves on any helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by May 16, 2022.

**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 <https://www.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.

For service information identified in this NPRM, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone 1-450-437-2862 or 1-800-363-8023; fax 1-450-433-0272; email [productsupport@bellflight.com](mailto:productsupport@bellflight.com); or at <https://www.bellflight.com/support/contact-support>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0387; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

#### FOR FURTHER INFORMATION CONTACT:

Kueth Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email [kuethe.harmon@faa.gov](mailto:kuethe.harmon@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2022-0387; Project Identifier AD-2021-01225-R” 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 <https://www.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 Kueth Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email [kuethe.harmon@faa.gov](mailto:kuethe.harmon@faa.gov). Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

##### Background

The FAA proposes to adopt a new AD for Bell Textron Inc., Model 212, 412, 412CF, and 412EP helicopters with an engine oil check valve part number (P/

N) 209-062-520-001 or fuel check valve P/N 209-062-607-001 manufactured by Circor Aerospace that is marked “Circle Seal” and “CORONA CA,” and has a manufacturing date code of, or prior to, “9/11” (September 2011), or does not have a manufacturing date code, installed. This proposed AD would not apply to check valves marked with “TQL.” This proposed AD was prompted by a report of a cracked check valve manufactured in 2009 by Circor Aerospace. An incorrect torque value applied on the threaded fitting at the check valve inlet end during the assembly process resulted in the crack. Indication of this condition may also include an enlarged outside diameter (O.D.) measurement of the check valve housing at the inlet end where the threaded fitting is installed or a leak. These check valves may be installed as engine oil check valve P/N 209-062-520-001 and fuel check valve P/N 209-062-607-001 on Bell Textron Inc., Model 212, 412, 412CF, and 412EP helicopters.

The FAA previously issued AD 2019-09-02, Amendment 39-19636 (84 FR 22695, May 20, 2019), which applies to the same model helicopters with the same part-numbered check valves installed, except it is only for check valves marked “Circle Seal” and with a manufacturing date code of “10/11” (October 2011) through “03/15” (March 2015).

This condition, if not addressed, could result in loss of lubrication or fuel to the engine, failure of the engine or a fire, and subsequent loss of control of the helicopter.

##### FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

##### Related Service Information

The FAA reviewed Bell Alert Service Bulletin (ASB) 212-20-163, Revision B, dated April 6, 2021 (ASB 212-20-163), Bell ASB 212-20-164, Revision B, dated April 6, 2021 (ASB 212-20-164), Bell ASB 412-20-182, Revision B, dated April 6, 2021 (ASB 412-20-182), and Bell ASB 412-20-183, Revision C, dated April 6, 2021 (ASB 412-20-183). ASB 212-20-163 and ASB 412-20-182 specify procedures for inspecting and replacing engine oil check valve P/N 209-062-520-001. ASB 212-20-164 and ASB 412-20-183 specify procedures for inspecting and replacing fuel check valve P/N 209-062-607-001.

### Proposed AD Requirements in This NPRM

This proposed AD would require measuring the O.D. of an affected (engine oil or fuel) check valve housing at the center and at the inlet end where the threaded fitting is installed. If the dimension measured at the inlet end is greater than 0.003 inch (0.0762 mm) compared to the measurement at the center, this proposed AD would require repetitively inspecting the check valve for a crack and leak, and depending on the results, removing the check valve from service. This proposed AD would also require removing the check valve from service at a longer compliance time, which would terminate the repetitive inspections. Lastly, this proposed AD would prohibit installing affected check valves on any helicopter.

### Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 169 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Measuring up to four check valves (two engine oil and two fuel) would take up to about 1 work-hour for an estimated cost of up to \$85 per helicopter and \$14,365 for the U.S. fleet. Inspecting up to four check valves (two engine oil and two fuel) would take up to about 2 work-hours for an estimated cost of up to \$170 per helicopter and \$28,730 for the U.S. fleet, per inspection cycle as applicable. Replacing up to four valves (two engine oil and two fuel) would take up to about 4 work-hours and parts would cost up to about \$340, for an estimated cost of up to \$680 per helicopter and \$114,920 for the U.S. fleet.

### 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:

**Bell Textron Inc.:** Docket No. FAA-2022-0387; Project Identifier AD-2021-01225-R.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2022.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Bell Textron Inc., Model 212, 412, 412CF, and 412EP helicopters, certificated in any category, with an engine oil check valve part number (P/N) 209-062-520-001 or fuel check valve P/N 209-062-607-001 manufactured by Ciracor Aerospace that:

(1) Is marked "Circle Seal" and "CORONA CA," except not a check valve marked with "TQL," and

(2) Has a manufacturing date code of, or prior to, "9/11" (September 2011), or does not have a manufacturing date code, installed.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 2800 Aircraft Fuel System and 7900 Engine Oil System (Airframe).

#### (e) Unsafe Condition

This AD was prompted by a report of a cracked check valve. The FAA is issuing this AD to detect a cracked check valve. The unsafe condition, if not addressed, could result in loss of lubrication or fuel to the engine, failure of the engine or a fire, and subsequent loss of control of the helicopter.

#### (f) Compliance

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

#### (g) Required Actions

(1) Within 25 hours time-in-service (TIS) or 30 days, whichever occurs first after the effective date of this AD, using a caliper or equivalent, measure the outside diameter (O.D.) of the check valve housing at the center, and the O.D. of the check valve housing at the inlet end where the threaded fitting is installed. If the dimension measured at the inlet end is greater than 0.003 inch (0.0762 mm) compared to the measurement at the center, do the following:

(i) Before further flight, and thereafter at intervals not to exceed 25 hours TIS or 30 days, whichever occurs first, using a flashlight, visually inspect the check valve for a crack and leak, paying particular attention to the area at the inlet end where the threaded fitting is installed. If there is a crack or leak, before further flight, remove the check valve from service. Removing the check valve from service terminates the repetitive inspections required by this AD for that check valve.

(ii) Within 600 hours TIS or 12 months, whichever occurs first, remove the check valve from service. Removing the check valve from service terminates the repetitive inspections required by this AD for that check valve.

(2) As of the effective date of this AD, do not install an engine oil or fuel check valve identified in paragraph (c) of this AD on any helicopter.

#### (h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: 9-ASW-190-COS@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(i) Related Information**

For more information about this AD, contact Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email [kuethe.harmon@faa.gov](mailto:kuethe.harmon@faa.gov).

Issued on March 25, 2022.

**Ross Landes,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022-06756 Filed 3-30-22; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 15**

[Docket No. FDA-2021-N-1326]

**Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox; Public Hearing; Request for Comments; Extension of Comment Period**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; request for comments; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is extending the comment period for the notice of public hearing that appeared in the **Federal Register** of January 13, 2022. In the notice, FDA requested comments on scientific data and information related to the residue of carcinogenic concern for the new animal drug carbadox. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

**DATES:** FDA is extending the comment period on the notice published January 13, 2022 (87 FR 2093). Submit either electronic or written comments by June 10, 2022.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 10, 2022.

The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 10, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

**Electronic Submissions**

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

**Written/Paper Submissions**

Submit written/paper submissions as follows:

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

**Instructions:** All submissions received must include the Docket No. FDA-2021-N-1326 for "Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at

<https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

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

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

**FOR FURTHER INFORMATION CONTACT:** Kelly Covington, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, [CarbadoxPublicHearing2022@fda.hhs.gov](mailto:CarbadoxPublicHearing2022@fda.hhs.gov), 240-402-5661.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 13, 2022, FDA published a notice announcing a public hearing on scientific data and information related to the residue of carcinogenic concern for the new animal drug carbadox, a carcinogenic new animal drug used in swine feed, with a 90-day comment period.

Interested persons were originally given until April 11, 2022, to comment on this hearing. The Agency has received a request to allow interested persons additional time to comment. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop comprehensive comments. We have concluded that it is reasonable to extend the comment period for 60 days. The Agency believes that this extension allows adequate time for interested persons to submit comments.

Dated: March 25, 2022.

**Andi Lipstein Fristedt,**

*Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.*

[FR Doc. 2022-06762 Filed 3-30-22; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2021-0336]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Fox River, Oshkosh, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Tayco Street Bridge, mile 37.52, the Main Street Bridge, mile 55.97, the Jackson Street Bridge, mile 56.22, the Wisconsin Street Bridge, mile 56.72, and the Congress Avenue Bridge, mile 58.01, all over the Fox River near Oshkosh, Wisconsin. This proposed rule will allow the bridges to operate remotely. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before May 31, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0336 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth

Coast Guard District; telephone 216-902-6085, email [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 OMB Office of Management and Budget  
 NPRM Notice of Proposed Rulemaking (Advance, Supplemental)  
 § Section  
 U.S.C. United States Code  
 WisDOT Wisconsin Department of Transportation

##### **II. Background, Purpose and Legal Basis**

On July 6, 2021, we published a temporary deviation in the **Federal Register** (86 FR 35402) to test the effectiveness of the remote bridge operations and to solicit public comments; public commenting closed on November 1, 2021. The Main Street Bridge, mile 55.97, provides a horizontal clearance of 89 feet and a vertical clearance 11 feet in the closed position, the Jackson Street Bridge, mile 56.22, provides a horizontal clearance of 97 feet and a vertical clearance of 11 feet in the closed position, the Wisconsin Street Bridge, mile 56.72, provides a horizontal clearance of 75 feet and a vertical clearance of 12 feet in the closed position, the Congress Avenue Bridge, mile 58.01, provides a horizontal clearance of 75 feet and a vertical clearance of 13 feet in the closed position, and the Tayco Street Bridge provides a horizontal clearance of 63 feet and a vertical clearance of 3 feet in the closed position. All of these bridges are over the Fox River and provide an unlimited clearance in the open position, and are governed by the regulations found in 33 CFR 117.1087.

WisDOT has tested the capabilities of the remote operating system with live operators in the bridges and allowed the public to comment on the bridge operations before this proposed rule was published.

This proposed rule will not change the operation of the bridges. WisDOT will provide weekly bridge opening data and approximate vehicle and pedestrian crossings at the end of the comment period. If the proposed rule is finalized, remote bridge operators will have the ability to communicate by visual or audio (two-way radio, loudspeaker, and telephone) means with vessels, including enough cameras to see above and below the bridge, including night vision cameras to monitor approaching river traffic in adverse weather conditions.

The Coast Guard will also inform the users of the waterways through our

Local Notice to Mariners when the comment period opens and how to leave comments.

##### **III. Discussion of Proposed Rule**

The remote operations of the bridges will not affect the operations of the current regulations. During the test deviation, we received nine comments. In addition to the responses to the comments below, WisDOT took the opportunity to answer each comment, and we have added those responses to the docket.

Most of the commenters described increased wait times for a remote bridge opening and indicated wait times were at least 30 minutes per bridge. Most of these delays were the result of challenges associated with training certain drawtenders on the new remote system. Moving forward, said drawtenders will be retrained to prevent delays beyond what users experience with live drawtenders. Further, WisDOT agreed that on certain weekends and holidays, when vessel and vehicle traffic will be the greatest, extra drawtenders will be provide to maintain a reliable level of safety for the public. Despite the comments discussed above, the data collected by WisDOT show that there were limited delays to boaters.

In response to the safety concern, there is audio and video equipment to monitor the bridge, with cameras above and below the bridge to provide sufficient visualization of the areas surrounding the bridge. Further, we would like to note that from January to December 2020 there were five reported boating accidents while the bridges were operated by independent drawtenders. Out of the five accidents, one required advanced first aid. During the 2021 test deviation, there were no reported boating accidents. The test deviation covered June 30 to October 7, 2021, when the waterways are the busiest. During 2021, during the period before and after the test deviation, no accidents were reported.

We did not address the incident of the bicyclist accident on the Racine Street Bridge because it occurred during the July 4th celebrations in 2018, on a bridge not included in the NPRM, and the cause of the incident, according to police records, was the result of human negligence and wholly unrelated to bridge operations.

The Tayco Street Bridge, mile 37.52 was not included in the test deviation because its remote operations were not discovered until after the conclusion of the test deviation. WisDOT has been remotely operating this bridge since 1984, after the U.S. Army Corps of Engineers abandoned the lock system

and the U.S. Coast Guard stopped regulating bridges as the waterway could not engage in interstate commerce. Because the bridge has been operated remotely for 37 years we find no reason to repeat the test deviation to include this bridge for comments.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule is not a significant regulatory action, as the bridges will open normally.

##### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

##### C. Collection of Information

This proposed rule would call for no 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

##### E. Unfunded Mandates Reform Act

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

##### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

##### G. Protest Activities

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

#### V. 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.

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–2021–0336 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 your material cannot be submitted using <https://www.regulations.gov>, contact the person

in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this proposed 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. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.1087 by adding paragraph (b)(3) to read as follows:

##### § 117.1087 Fox River.

\* \* \* \* \*

(b) \* \* \*

(3) All drawbridges between mile 37.52 and 58.01, are authorized to be operated remotely, and are required to operate and maintain a VHF–FM Marine Radio.

\* \* \* \* \*

#### M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2022–06803 Filed 3–30–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2022–0062]

RIN 1625–AA00

#### Safety Zone, Saint Simons Sound, GA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to remove an existing temporary safety zone which was put in place in response to the grounding of the M/V GOLDEN RAY. Salvage operations pertaining to the M/V GOLDEN RAY have concluded, therefore a safety zone is no longer required. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 2, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0062 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST1 Ashley Schad, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard, 912–652–4188 extension 242, or email [Ashley.M.Schad@uscg.mil](mailto:Ashley.M.Schad@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, Purpose, and Legal Basis

On September 19, 2019, an emergency safety zone was put into place to protect vessels using the waterway from response and salvage operations pertaining to the capsizing of the M/V GOLDEN RAY.<sup>1</sup> On January 25, 2022 the Unified Command in charge of the M/V GOLDEN RAY response and salvage operations notified the COTP, Marine Safety Unit Savannah that

salvage operations have concluded, therefore the safety zone in Saint Simons Sound is no longer required.

The purpose of this rulemaking is to remove the safety zone previously established in response to the capsizing of the M/V GOLDEN RAY. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

#### III. Discussion of Proposed Rule

The COTP is proposing to remove the temporary safety zone which was put into place on September 19, 2019, in response to the grounding of the M/V GOLDEN RAY (located at 31°07′39.66 North, 081°24′10.58 West, between Saint Simons Lighthouse and the north end of Jekyll Island, in the vicinity of green buoy #19). By removing the safety zone, all waterway users, including commercial, private, and recreational vessels would have unrestricted access to the waterway. The temporary zone was originally established with the intention that it would be removed once all response and salvage resources were demobilized and removed from the waterway pertaining to the capsizing of the M/V GOLDEN RAY. On January 25, 2022, it was determined that all response and salvage resources and assets were no longer in the vicinity of the safety zone and removal of the M/V GOLDEN RAY was complete. Removal of environmental protective barriers including cofferdams and precautionary containment boom were also completed.

#### IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on waterway usage and the temporary nature of the previously established safety zone. While the temporary safety zone that we are proposing for removal was in place for

<sup>1</sup> 84 FR 51413.

more than two years, it was never intended to be permanent. There were many obstructions and hazards in the waterway, including the M/V GOLDEN RAY and other artificial obstructions that were used in its salvage and the associated pollution prevention measures. These obstructions created a necessity for the temporary safety zone, but the obstructions have been removed, therefore there is no longer a need for the temporary safety zone. Once the temporary safety zone is removed, all waterway users will regain unrestricted access to the waterway.

#### 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on any vessel owner or operator as full access to the waterway would be reestablished and would not prevent any vessel from entering the previously established safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves removing a previously established temporary safety zone.

Normally such actions are categorically excluded from further review under paragraph L(60b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

#### V. 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– 2022–0062 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 proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed 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. We review all comments received, but we will only post comments that address the topic of the proposed 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 part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

#### § 165.T07–0794 [Removed]

- 2. Remove § 165.T07–0794.

Dated: March 8, 2022.

**K.A Broyles,**

*Commander, U.S. Coast Guard, Captain of the Port Savannah, GA.*

[FR Doc. 2022–06797 Filed 3–30–22; 8:45 am]

**BILLING CODE 9110–04–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2022–0139]

RIN 1625–AA00

#### Safety Zone; Columbia River, Richland, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for the safety of participants and the maritime public during a high-speed boat race. This proposed rulemaking would prohibit non-participant persons and vessel from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 2, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0139 using the Federal Decision Making Portal at [https://](https://www.regulations.gov)

[www.regulations.gov](https://www.regulations.gov). See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email [D13-SMB-MSUPortlandWWM@uscg.mil](mailto:D13-SMB-MSUPortlandWWM@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background, Purpose, and Legal Basis

On November 3, 2021, Northwest Powerboat Association notified the Coast Guard that it will be conducting a high-speed boat race from 8 a.m. to 7 p.m. on June 24, 2022 through June 26, 2022. These boats will be traveling at a rate of speed greater than usual boat traffic, and will be utilizing all of the waterway in the vicinity of Howard Amon Park, between mile markers 337 and 338. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the high speed boat race would be a safety concern for anyone in the regulated area.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in these navigable waters in the vicinity of Howard Amon Park, between mile markers 337 and 338, for the duration of the 3-day event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

##### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone that will be subject to enforcement from 7:30 a.m. to 7:30 p.m. on June 24, 2022 through June 26, 2022. The safety zone will cover all navigable waters of the Columbia River from surface to bottom, in the vicinity of Howard Amon Park, between mile markers 337 and 338. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the 3-day event. No vessel or person would be permitted to enter the regulated area without

obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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. This regulatory action will only impact a small 1-mile section of the Columbia River. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows 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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this

proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting only 60 hours that will prohibit entry within a 1 mile length of the Columbia River for the duration of a high-speed boat race. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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.

#### V. 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–2022–0139 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 proposed rule for alternate instructions.

**Viewing material in docket.** To view documents mentioned in this proposed 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. We review all comments received, but we will only post comments that address the topic of the proposed 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 record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T13–0139 to read as follows:

#### § 165.T13–0139 Safety Zone; Columbia River, Richland, WA.

(a) **Location.** The following area is a safety zone: All navigable waters of the Columbia River from surface to bottom, in the vicinity of Howard Amon Park, between mile markers 337 and 338.

(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 Columbia River (COTP) in the enforcement of the safety zone.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, all non-participants 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 calling (503) 209-2468 or the Sector Columbia River Command Center on Channel 16 VHF-FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This section will be enforced from 7:30 a.m. until 7:30 p.m. on June 24, June 25, and June 26, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: March 24, 2022.

**M. Scott Jackson,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.*

[FR Doc. 2022-06790 Filed 3-30-22; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG-2022-0140]

RIN 1625-AA00

**Safety Zone; Columbia River, Vancouver, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for

the safety of life on these navigable waters near Vancouver, WA during a high-speed hydroplane boat testing event on May 20, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 2, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0140 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email [D13-SMB-MSUPortlandWWM@uscg.mil](mailto:D13-SMB-MSUPortlandWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background, Purpose, and Legal Basis**

On January 19, 2022, the H1 Unlimited notified the Coast Guard that it will be conducting a hydroplane testing event from 9 a.m. to 3 p.m. on May 20, 2022. The hydroplane event will consist of individual testing of 10 hydroplane vessels in between the I-5 and I-205 bridges on the Columbia River. The Captain of the Port Columbia (COTP) has determined that potential hazards associated with the high-speed hydroplane boat testing would be a safety concern for anyone within the regulated area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the safety zone before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

**III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone from 8:30 a.m. to 3:30 p.m.

on May 20, 2022. The safety zone would cover all navigable waters of the Columbia River, from surface to bottom, starting approximately 700 yards east of the I-5 bridge from shoreline to shoreline heading east for approximately 1.2 miles; specifically beginning at the shoreline at 45°36'40.7" N, 122°40'11.2" W, northeast to 45°37'08.7" N, 122°39'53.8" W, southeast to 45°36'41.3" N, 122°38'32.0" W, thence southwest to 45°36'15.8" N, 122°38'53.0" W, and along the shoreline back to the beginning point. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. to 3 p.m. high-speed hydroplane boat testing. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

**IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and the duration of the safety zone. The safety zone will impact a 1.2 mile stretch of the Columbia River during the hydroplane boat testing for 7 hours and thus is limited in scope. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter.

**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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 7 hours that would prohibit entry within an approximate 1.2 miles of the Columbia River for the duration of a high-speed hydroplane testing event. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### 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.

## V. 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–2022–0140 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 proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed 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. We review all comments received, but we will only post comments that address the topic of the proposed 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 is proposing to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

■ 2. Add § 165.T13–0140 to read as follows:

**§ 165.T13–0140 Safety Zone; Columbia River, Vancouver, WA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, from surface to bottom, starting approximately 700 yards east of the I–5 bridge from shoreline to shoreline heading east for approximately 1.2 miles; specifically beginning at the shoreline at 45°36′40.7″ N, 122°40′11.2″ W, northeast to 45°37′08.7″ N, 122°39′53.8″ W, southeast to 45°36′41.3″ N, 122°38′32.0″ W, thence southwest to 45°36′15.8″ N, 122°38′53.0″ W, and along the shoreline back to the beginning point.

(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 COTP in the enforcement of the regulations in this section.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the testing event.

(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 calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 3:30 p.m. on May 20, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: March 24, 2022.

**M. Scott Jackson,**  
*Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.*

[FR Doc. 2022–06786 Filed 3–30–22; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

**[EPA–R04–OAR–2021–0472; FRL–9646–01–R4]**

**Air Plan Approval; North Carolina; Repeal of Delegation Authority**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina's Department of Environmental Quality (DEQ), Division of Air Quality (DAQ or Division), via a letter dated April 13, 2021. This proposed rulemaking addresses the repeal of a State regulation related to delegation of authority and removal of the regulation from the North Carolina SIP. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before May 2, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0472 at [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:**

Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On April 13, 2021, the State of North Carolina submitted changes to the North Carolina SIP for EPA's approval.<sup>1</sup> Specifically, EPA is proposing to approve changes to the North Carolina SIP related to 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Rule .0615, *Delegation*.<sup>2</sup> The April 13, 2021, SIP revision seeks to remove the aforementioned regulation from the SIP because the regulation is unnecessary and has been repealed at the state level.

**II. Analysis of the State's Submittal**

The April 13, 2021, SIP revision seeks to remove 15 NCAC 02D, Rule .0615—*Delegation*, from the North Carolina SIP. Rule .0615 provides that the Director of the DAQ has the authority to delegate his or her administrative and approval functions under Section 02D .0600, *Monitoring; Recordkeeping; Reporting*, to other officials in the Division. North Carolina states in its April 13, 2021, submittal that this rule is unnecessary and was repealed at the state level. EPA is proposing to approve the removal of Rule .0615 from the SIP for these reasons and because removal will not impact emissions or interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

**III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule amended regulatory text that includes incorporation by reference. EPA is proposing to remove 15A NCAC 02D, Rule .0615—*Delegation*, state effective on November 1, 2020, from the North Carolina State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1

<sup>1</sup> EPA received the submittal on April 14, 2021, and for clarity, refers to the submission per its "letter date" of April 13, 2021, throughout this notice.

<sup>2</sup> EPA notes that the Agency received several revisions to the North Carolina SIP that were transmitted with the same April 13, 2021, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

CFR part 51. EPA has made, and will continue to make, the State Implementation Plan generally available at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### IV. Proposed Action

EPA is proposing to approve changes to the North Carolina SIP. Specifically, for the reasons described above, EPA is proposing to approve the removal of 15 NCAC 02D, Rule .0615—*Delegation*, from the North Carolina SIP.

#### V. Statutory and Executive Order Reviews

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

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: March 25, 2022.

**Daniel Blackman,**

*Regional Administrator, Region 4.*

[FR Doc. 2022–06773 Filed 3–30–22; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 60, 61, and 63

[EPA–R09–OAR–2021–0962; FRL–9400–01–R9]

#### Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona and California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve updates to the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and California.

**DATES:** Comments must be received by May 2, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0962 at <https://www.regulations.gov>, or via email to

[buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, (415) 947–4152, [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the “Rules and Regulations” section of this issue of the **Federal Register**, the EPA is approving updates to the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and California. We are approving these updates in a direct final action without prior proposal because we believe this action is not controversial. A detailed rationale for the approval is set forth in the direct final rule. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent final rule based on this proposed rule. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is

planned. For further information, see please see the direct final action published in the “Rules and Regulation” section of this issue of the **Federal Register**.

Dated: March 17, 2022.

**Elizabeth Adams,**

Director Air and Radiation Division Region IX.

[FR Doc. 2022-06278 Filed 3-30-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1990-0010, EPA-HQ-1994-0001; EPA-HQ-SFUND-2002-0008, EPA-HQ-SFUND-2003-0010, EPA-HQ-OLEM-2021-0797, EPA-HQ-OLEM-2021-0798, EPA-HQ-OLEM-2021-0815; EPA-HQ-OLEM-2021-0922, EPA-HQ-OLEM-2021-0934, EPA-HQ-OLEM-2021-0935, EPA-HQ-OLEM-2022-0111; FRL-9172-02-OLEM]

### Proposed Deletion From the National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and withdrawal of proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is withdrawing the proposed rule published in the **Federal Register** on March 22, 2022 (87 FR 16135) due to typographical errors. EPA is reissuing a Notice of Intent to delete four sites and partially delete six sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state, through its designated state agency, have determined that all appropriate response actions under CERCLA, other than operations and maintenance of the remedy, monitoring and five-year reviews, where applicable, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** The proposed action published on March 22, 2022 (87 FR 16135) is hereby withdrawn, effective March 31, 2022. Comments regarding this new proposed action must be submitted on or before May 2, 2022.

**ADDRESSES:** EPA has established a docket for this action under the Docket

Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. Submit your comments, identified by the appropriate Docket ID number, by one of the following methods:

- <https://www.regulations.gov>.

Follow on-line 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

- **Email:** Table 2 in the **SUPPLEMENTARY INFORMATION** section of this document provides an email address to submit public comments for the proposed deletion action.

**Instructions:** Direct your comments to the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The <https://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Public comments received on the proposed rule published March 22, 2022 (87 FR 16135) will be considered in response to this proposed rule and do not need to be resubmitted.

**Docket:** EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. 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, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the corresponding Regional Records Center. Location, address, and phone number of the Regional Records Centers follows.

#### Regional Records Center:

- Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA New England, EMS Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; 617/918-1440.
- Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mail code 3MD13, Philadelphia, PA 19103; 215/814-3024.
- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303; 404/562-8637.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC-7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886-4465.
- Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551-7956.
- Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202-1129; 303/312-7273.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID-19. Information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>. The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

**FOR FURTHER INFORMATION CONTACT:**

- Robert Lim, U.S. EPA Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, [lim.robert@epa.gov](mailto:lim.robert@epa.gov), 617/918-1392.
- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), [hass.andrew@epa.gov](mailto:hass.andrew@epa.gov), 215/814-2049.
- Leigh Lattimore or Brian Farrier, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), [lattimore.leigh@epa.gov](mailto:lattimore.leigh@epa.gov) or [farrier.brian@epa.gov](mailto:farrier.brian@epa.gov), 404/562-8768 or 404/562-8952.
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), [cibulskis.karen@epa.gov](mailto:cibulskis.karen@epa.gov), 312/886-1843.
- David Wennerstrom, U.S. EPA Region 7 (IA, KS, MO, NE), [wennerstrom.david@epa.gov](mailto:wennerstrom.david@epa.gov), 913/551-7996.
- Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), [kiefer.linda@epa.gov](mailto:kiefer.linda@epa.gov), 303/312-6689.
- Chuck Sands, U.S. EPA Headquarters, [sands.charles@epa.gov](mailto:sands.charles@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Partial Site Deletion

**I. Introduction**

EPA is withdrawing the proposed rule published in the **Federal Register** on March 22, 2022 (87 FR 16135) due to typographical errors. EPA is reissuing a Notice of Intent to delete four sites and partially delete six sites from the National Priorities List (NPL) and requests public comments on this proposed action.

The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA created under section 105 of the CERCLA statute of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance

Superfund (Fund). These partial deletions are proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466, (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to delete or partially delete these sites for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that EPA is using for this action. Section IV of this document discusses the site or portion of the site proposed for deletion and demonstrates how it meets the deletion criteria, including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever

there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

**III. Deletion Procedures**

The following procedures apply to the deletion or partial deletion of the sites in this proposed rule:

(1) EPA consulted with the respective state before developing this Notice of Intent for deletion.

(2) EPA has provided the state 30 working days for review of site deletion documents prior to publication of this Notice of Intent to Delete today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The state, through their designated state agency, has concurred with the proposed deletion action.

(5) Concurrently, with the publication of this Notice of Intent for deletion in the **Federal Register**, a notice is being published in a major local newspaper of general circulation near the site. The newspaper announces the 30-day public comment period concerning the Notice of Intent for deletion.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket, made these items available for public inspection, and copying at the Regional Records Center identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete or partially delete the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete or partially delete the site, the EPA will publish a final Notice of Deletion or Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a site or a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site or a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.



**IV. Basis for Full Site or Partial Site Deletion**

The site to be deleted or partially deleted from the NPL, the location of the site, and docket number with information including reference documents with the rationale and data

principally relied upon by the EPA to determine that the Superfund response is complete are specified in Table 1. The NCP permits activities to occur at a deleted site or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year

reviews. These activities for the site are entered in Table 1, if applicable, under Footnote such that; 1 = site has continued operation and maintenance of the remedy, 2 = site receives continued monitoring, and 3 = site five-year reviews are conducted.

TABLE 1

Site name	City/county, state	Type	Docket No.	Footnote
McKin Co .....	Gray, ME .....	Full .....	EPA-HQ-OLEM-2021-0922 .....	1, 2, 3.
Tybouts Corner Landfill .....	New Castle County, DE .....	Partial .....	EPA-HQ-OLEM-2021-0797 .....	1, 3.
C&R Battery Co., Inc .....	Chesterfield County, VA .....	Full .....	EPA-HQ-OLEM-2021-0798 .....	1, 3.
Chem-Solv, Inc .....	Cheswold, DE .....	Full .....	EPA-HQ-OLEM-2021-0934 .....	1, 3.
Koppers Co., Inc (Charleston Plant) ...	Charleston, SC .....	Partial .....	EPA-HQ-SFUND-1994-0001 .....	1, 3.
Brantley Landfill .....	Island, KY .....	Full .....	EPA-HQ-OLEM-2022-0111 .....	1, 2, 3.
Summit National .....	Deerfield Township, OH .....	Partial .....	EPA-HQ-OLEM-2021-0815 .....	1, 3.
Himco Dump .....	Elkhart, IN .....	Partial .....	EPA-HQ-SFUND-1990-0010 .....	1, 3.
Omaha Lead .....	Omaha, NE .....	Partial .....	EPA-HQ-SFUND-2003-0010 .....	1, 3.
Libby Asbestos .....	Libby, MT .....	Partial .....	EPA-HQ-SFUND-2002-0008 .....	1, 3.

Table 2 includes information concerning whether the full site is proposed for deletion from the NPL or a description of the area, media or

Operable Units (OUs) of the NPL site proposed for partial deletion from the NPL, and an email address to which public comments may be submitted if

the commenter does not comment using <https://www.regulations.gov>.

TABLE 2

Site name	Full site deletion (full) or media/parcels/ description for partial deletion	E-mail address for public comments
McKin Co .....	Full .....	<i>bryant.john@epa.gov.</i>
Tybouts Corner Landfill .....	2 parcels soil and groundwater, approx. 78 acres.	<i>hinkle.christopher@epa.gov.</i>
C&R Battery Co., Inc .....	Full .....	<i>guerrero.karla@epa.gov.</i>
Chem-Solv, Inc .....	Full .....	<i>hinkle.christopher@epa.gov.</i>
Koppers Co., Inc (Charleston Plant) .....	98 acres of soils, sediments, and tidal marsh	<i>zeller.craig@epa.gov.</i>
Brantley Landfill .....	Full .....	<i>jackson.brad@epa.gov.</i>
Summit National .....	Land/soil portion of landfill, adjacent removal areas, and 45 downgradient parcels.	<i>Deletions@usepa.onmicrosoft.com.</i>
Himco Dump .....	11.5-acre land/soil portion of the site plus adjacent soils.	<i>Deletions@usepa.onmicrosoft.com.</i>
Omaha Lead .....	19 residential parcels .....	<i>wennerstrom.david@epa.gov.</i>
Libby Asbestos .....	OU6 including 42 miles of railroad right-of-way between and in the towns of Libby and Troy, MT.	<i>zinner.dania@epa.gov.</i>

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that

future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 25, 2022.

**Larry Douchand,**

*Office Director, Office of Superfund Remediation and Technology Innovation.*

[FR Doc. 2022–06774 Filed 3–30–22; 8:45 am]

**BILLING CODE 6560–50–P**

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–2022–0015]

#### Notice of Availability of an Environmental Assessment for Release of *Psyllaephagus euphyllurae* for Biological Control of Olive Psyllid in the Contiguous United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to permitting the release of the insect, *Psyllaephagus euphyllurae*, for the biological control of olive psyllid (*Euphyllura olivina*) in the contiguous United States. Based on the environmental assessment and other relevant data, we have reached a preliminary determination that the release of this control agent within the contiguous United States will not have a significant impact on the quality of the human environment. We are making the environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before May 2, 2022.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS–2022–0015 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at [regulations.gov](http://regulations.gov) or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1238; (301) 851–2327; email: [Colin.Stewart@usda.gov](mailto:Colin.Stewart@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of the insect, *Psyllaephagus euphyllurae*, for the biological control of olive psyllid (*Euphyllura olivina*) in the contiguous United States. The action is proposed to reduce the severity of damage to olive crops from infestations of olive psyllid in the contiguous United States.

The olive psyllid is native to southern Europe. It was first detected in North America in 2007. By the time this psyllid was found on olives in southern California, it was widespread in the region. This pest feeds exclusively on the flower blossoms and growing tissue of olive, causing reductions in fruit set, with reductions in fruit yield as high as 60 percent reported in some parts of the Mediterranean Basin.

Permitting the release of *P. euphyllurae* is necessary to reduce the severity of damage to olives from infestations of olive psyllid. *P. euphyllurae* is a small, stingless parasitoid wasp specific only to olive psyllid. The adult wasp lays an egg inside the olive psyllid. The egg hatches and consumes the olive psyllid host. The *P. euphyllurae* then goes into prolonged dormancy as a preadult in the host mummy's remains until the following spring. The wasp poses no risk to humans, livestock, or wildlife.

Current olive psyllid control relies primarily on cultural control and insecticides, which are expensive and temporary. They are not always effective, and they may cause non-target impacts. Host-specificity testing

indicates *P. euphyllurae* is unlikely to attack non-target species. Classical biological control is a potentially useful management strategy for an invasive pest species whenever effective resident natural enemies are lacking in the new distribution range.

APHIS' review and analysis of the potential environmental impacts associated with the proposed release are documented in an environmental assessment (EA) titled "Release of *Psyllaephagus euphyllurae* (Hymenoptera: Encyrtidae) for Biological Control of Olive Psyllid, *Euphyllura olivina* (Hemiptera: Liviidae), in the Contiguous United States" (November 2021). Based on our findings in the EA, we are proposing to issue permits for the release of the insect, *P. euphyllurae*, as a biological control agent to reduce the severity of infestations of olive psyllid. We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the [regulations.gov](http://regulations.gov) website or in our reading room (see **ADDRESSES** above for a link to [regulations.gov](http://regulations.gov) and information on the location and hours of the reading room). You may also request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of March 2022.

**Anthony Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2022–06760 Filed 3–30–22; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[S-39-2022]

**Foreign-Trade Zone 189—Kent/Ottawa/Muskegon Counties, Michigan Application for Subzone, GHSP Inc., Grand Haven, Hart and Holland, Michigan**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the KOM Foreign Trade Zone Authority, grantee of FTZ 189, requesting subzone status for the facilities of GHSP Inc., located in Grand Haven, Hart and Holland, Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 25, 2022.

The proposed subzone would consist of the following sites: *Site 1* (4.27 acres) 1250 South Beechtree Street, Grand Haven; *Site 2* (2.16 acres) 1500 Industrial Park Drive, Hart; *Site 3* (0.8 acres) 1550 Industrial Park Drive, Hart; and, *Site 4* (3.52 acres) 701 S Waverly Road, Suite 100, Holland. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 189.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is May 10, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 25, 2022.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

*For Further Information Contact:*  
Elizabeth Whiteman at  
[Elizabeth.Whiteman@trade.gov](mailto:Elizabeth.Whiteman@trade.gov).

Dated: March 28, 2022.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2022-06800 Filed 3-30-22; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Order No. 2125]

**Reorganization and Expansion of Foreign-Trade Zone 15 (Expansion of Service Area and New Magnet Site) Under Alternative Site Framework, Kansas City, Missouri**

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 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 adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas*, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, submitted an application to the Board (FTZ Docket B-63-2021, docketed September 14, 2021) for authority to expand the service area of the zone to include Holt County, as described in the application, and to include a new magnet site (proposed Site 24) in Holt County, adjacent to the Kansas City Customs and Border Protection port of entry;

*Whereas*, notice inviting public comment was given in the **Federal Register** (86 FR 52127, September 20, 2021) 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 examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore*, the Board hereby orders:

The application to reorganize FTZ 15 to expand the service area and to include a new magnet site under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 24 is not activated within the initial seven years from the month of approval.

Dated: March 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairperson, Foreign-Trade Zones Board.

[FR Doc. 2022-06779 Filed 3-30-22; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-201-820]

**Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico: Final Results of the 2019–2020 Administrative Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) continues to find that the respondents selected for individual examination, Bioparques De Occidente, S.A. de C.V. and its affiliates (Bioparques), Del Campo Y Asociados SA de CV and its affiliates (Del Campo), and Productora Agricola Industrial del Noroeste, SA de CV and its affiliates (Productora Agricola), (collectively mandatory respondents), were generally in compliance with the terms of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement) during the period of review (POR) from September 19, 2019, through August 31, 2020, with the exception of certain instances of non-compliance. Commerce continues to find such instances of non-compliance to be inconsequential and/or inadvertent, and thus not violations under the 2019 Agreement, and that the 2019 Agreement is meeting the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act).

**DATES:** Applicable March 31, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Sally C. Gannon or David Cordell, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0162 or (202) 482-0408, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On October 1, 2021, Commerce published the *Preliminary Results of*

this administrative review.<sup>1</sup> On October 8, 2021, Commerce issued questionnaires in lieu of on-site verification to each of the respondents,<sup>2</sup> to which each respondent filed its response on October 18, 2021.<sup>3</sup> On October 21, 2021, Commerce set the briefing schedule.<sup>4</sup> On November 16, 2021, a member of the U.S. petitioning industry, the Florida Tomato Exchange (FTE), and Del Campo,<sup>5</sup> filed case briefs,<sup>6</sup> and on November 24, 2021, each of the mandatory respondents filed a rebuttal brief.<sup>7</sup> On January 18, 2022, Commerce extended the deadline for the final results to March 30, 2022.<sup>8</sup>

### Scope of 2019 Agreement

The merchandise subject to this 2019 Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this 2019 Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into

<sup>1</sup> See *Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico: Preliminary Results of 2019–2020 Administrative Review*, 86 FR 54424 (October 1, 2021) (*Preliminary Results*).

<sup>2</sup> See Commerce's Letters, "In Lieu of On-Site Verification Questionnaire for Productora Agrícola Industrial del Noroeste, SA de CV and its Affiliates," dated October 8, 2021; "In-Lieu of On-Site Verification Questionnaire for Bioparques de Occidente, S.A. de C.V. and its Affiliates," dated October 8, 2021; and "In-Lieu of On-Site Verification Questionnaire for Del Campo Y Asociados, S.A. de C.V.," dated October 8, 2021.

<sup>3</sup> See Productora Agrícola's Letter, "Response of Productora Agrícola Industrial del Noroeste, S.A. de C.V. to the Department's October 8, 2021 In Lieu of On-Site Verification Questionnaire," dated October 18, 2021; Bioparques' Letter, "Response of Bioparques de Occidente, S.A. de C.V. to the Department's October 8, 2021 In Lieu of On-Site Verification Questionnaire," dated October 18, 2021; and Del Campo's Letter, "Response of Del Campo Y Asociados, S.A. de C.V. to the Department's October 8, 2021 In Lieu of On-Site Verification Questionnaire," dated October 18, 2021.

<sup>4</sup> See Memorandum, "Briefing Schedule," dated October 21, 2021.

<sup>5</sup> See Del Campo's Letter, "Case Brief of Del Campo Y Asociados, S.A. de C.V.," dated November 16, 2021.

<sup>6</sup> See FTE's Letter, "Case Brief on Behalf of the Florida Tomato Exchange," dated November 16, 2021.

<sup>7</sup> See Del Campo's Letter, "Rebuttal Brief of Del Campo Y Asociados, S.A. de C.V.," dated November 24, 2021; Bioparques' Letter, "Rebuttal Brief of Bioparques de Occidente, S.A. de C.V.," dated November 24, 2021; and Productora Agrícola's Letter, "Rebuttal Brief of Productora Agrícola Industrial del Noroeste, S.A. de C.V.," dated November 24, 2021.

<sup>8</sup> See Memorandum, "Extension of Deadline for Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement)," dated January 18, 2022.

juices, sauces, or purees. In Appendix F of this 2019 Agreement, Commerce has outlined the procedure that Signatories must follow for selling subject merchandise for processing. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), are covered by this 2019 Agreement. Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this 2019 Agreement. Tomatoes imported from Mexico covered by this 2019 Agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although this HTSUS number is provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

A full description of the scope of the order is also contained in the Issues and Decision Memorandum.<sup>9</sup>

### Analysis

Commerce continues to find, based on record evidence, that the selected respondents, Bioparques, Del Campo and Productora Agrícola, were generally in compliance with the terms of the 2019 Agreement during the POR, with the exception of certain non-compliance which Commerce continues to find inconsequential and inadvertent. Therefore, Commerce finds that there have been no material or consequential violations of the 2019 Agreement by the selected respondents during the POR. We also determine that the 2019 Agreement is preventing price suppression or undercutting and can be effectively monitored.

The issues raised in the case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum and business proprietary memoranda.<sup>10</sup> The issues are identified

<sup>9</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico, for the period September 19, 2019, through August 31, 2020," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>10</sup> See Issues and Decision Memorandum; *see also* Memorandum, "Final Analysis of Proprietary Information and Argument Regarding Bioparques de Occidente, S.A. de C.V. and its Affiliates," dated concurrently with this memorandum; Memorandum, "Final Analysis of Proprietary Information and Argument Regarding Del Campo Asociados and Its Affiliates," dated concurrently

in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

### Notification to Interested Parties

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 25, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Scope of the Agreement
- III. Background
- IV. Discussion of the Issue
  1. Alleged Possible Violations of the 2019 Agreement
  2. Normal Value Adjustment to Account for Differences in Physical Characteristics
  3. Reconciliation of U.S. Sales at Verification with Respect to Bioparques
  4. Movement Expenses in Del Campo's Sample Dumping Calculation
- V. Recommendation

[FR Doc. 2022–06831 Filed 3–30–22; 8:45 am]

**BILLING CODE 3510-DS-P**

with this memorandum; and Memorandum, "Final Analysis of Proprietary Information and Argument Regarding Productora Agrícola Industrial del Noroeste, SA de CV and its Affiliates," dated concurrently with this memorandum. These memoranda are hereby adopted by this notice.

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A–851–805, A–821–835]

**Emulsion Styrene-Butadiene Rubber From the Czech Republic and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations****AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.**DATES:** Applicable March 31, 2022.**FOR FURTHER INFORMATION CONTACT:** Leo Ayala (the Czech Republic); or Caitlin Monks and Zachary Le Vene (the Russian Federation (Russia)), AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945, (202) 482–2670, and (202) 482–0056, respectively.**SUPPLEMENTARY INFORMATION:****Background**

On December 6, 2021, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of emulsion styrene-butadiene rubber (ESBR) from the Czech Republic and Russia.<sup>1</sup> Currently, the preliminary determinations are due no later than April 25, 2022.

**Postponement of Preliminary Determinations**

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request.

<sup>1</sup> See *Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation: Initiation of Less-than-Fair-Value Investigations*, 86 FR 70447 (December 10, 2021).

Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 17, 2022, the petitioner<sup>2</sup> submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.<sup>3</sup> The petitioner stated that it requests postponement because “{Commerce} has not yet received full and completed responses to the questionnaire it issued to respondents,” and the “{p}etitioner has identified deficiencies in the responses provided that must be remedied prior to {Commerce’s} issuance of its preliminary determination.”<sup>4</sup>

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.*, 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than June 14, 2022. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

**Notification to Interested Parties**

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 25, 2022.

**Lisa W. Wang,***Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–06828 Filed 3–30–22; 8:45 am]

**BILLING CODE 3510–DS–P****DEPARTMENT OF COMMERCE****International Trade Administration**

[A–560–826]

**Monosodium Glutamate From the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2019–2020****AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.**SUMMARY:** The Department of Commerce (Commerce) determines that PT. Miwon

<sup>2</sup> The petitioner is Lion Elastomers LLC.

<sup>3</sup> See Petitioner’s Letter, “Emulsion Styrene-Butadiene Rubber from the Czech Republic and Russia: Petitioner’s Request for Postponement of Preliminary Determination,” dated March 17, 2022.

<sup>4</sup> *Id.*

Indonesia (Miwon) made sales of subject merchandise below normal value, and that PT. Cheil Jedang Indonesia (CJ Indonesia) did not. The period of review (POR) is November 1, 2019, through October 31, 2020.

**DATES:** Applicable March 31, 2022.**FOR FURTHER INFORMATION CONTACT:** Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.**SUPPLEMENTARY INFORMATION:****Background**

On November 30, 2021, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty (AD) order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia).<sup>1</sup> For a history of events that have occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>2</sup>

**Scope of the Order**

The merchandise covered by the antidumping duty order is MSG, whether or not blended or in solution with other products. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

**Analysis of Comments Received**

Commerce addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. These issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

<sup>1</sup> See *Monosodium Glutamate from the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020*, 86 FR 67907 (November 30, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of Indonesia; 2019–2020,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

### Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculation for CJ Indonesia and Miwon since the *Preliminary Results*. For CJ Indonesia, we have revised the margin program to deduct home market selling expenses. For Miwon, we have revised the margin program to use the proper customer code and deactivated the level of trade adjustment language in the home market and margin programs.

### Final Results of Review

As a result of this administrative review, we determine the following weighted-average dumping margins for the period November 1, 2019, through October 31, 2020:

Producer/exporter	Weighted-average dumping margin (percent)
PT. Cheil Jedang Indonesia .....	* 0.00
PT. Miwon Indonesia .....	1.60

\*(*De minimis*.)

### Disclosure

Commerce intends to disclose the calculations performed for CJ Indonesia and Miwon in these final results to interested parties within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

### Assessment

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this administrative review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Where the respondent reported reliable entered values, Commerce calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each

importer (or customer).<sup>3</sup> Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to a specific importer or customer by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.<sup>4</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.*, 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.<sup>5</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>6</sup>

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise that entered the United States during the POR that were produced by CJ Indonesia or Miwon for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,<sup>7</sup> if there is no rate for the intermediate company(ies) involved in the transaction.<sup>8</sup>

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the companies covered by this review, the cash deposit rate will be the rates listed above in the section "Final Results of Review"; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in a completed segment for the most recent period of review; (3) if the exporter is

not a firm covered in this review or in the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.<sup>9</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Administrative Protective Order

This notice also serves as a reminder to parties subject to 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 the return or 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

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 25, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the Preliminary Results
- V. Discussion of the Issues
  - Comment 1: CJ Indonesia's Direct Selling Expenses
  - Comment 2: Miwon's "Other Discount" Deductions
  - Comment 3: Miwon's Warehousing Expenses
  - Comment 4: Miwon's Margin Calculation

<sup>3</sup> See 19 CFR 351.212(b)(1).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See 19 CFR 351.106(c)(2).

<sup>7</sup> See *Monosodium Glutamate from the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value*, 79 FR 58329 (September 29, 2014) (*MSG Investigation Final Determination*).

<sup>8</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>9</sup> See *MSG Investigation Final Determination*.

Comment 5: Level of Trade Adjustment or Constructed Export Price (CEP) Offset for Miwon

#### VI. Recommendation

[FR Doc. 2022-06833 Filed 3-30-22; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB916]

#### South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) April 18–20, 2022.

**DATES:** The Snapper Grouper AP will meet from 1:30 p.m. until 5 p.m. on April 18, 2022; from 9 a.m. until 4:30 p.m. on April 19, and 9 a.m. until 12 p.m. on April 20, 2022.

**ADDRESSES:**

*Meeting address:* Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; phone: (843) 744-4422.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: <http://safmc.net/safmc-meetings/current-advisory-panel-meetings>. Webinar registration links for the meeting will also be available from the Council's website.

The Snapper Grouper AP will discuss and provide recommendations on the following topics: Management options considered to reduce release mortality in the snapper grouper fishery through Regulatory Amendment 35 to the Snapper Grouper Fishery Management Plan; options being developed for recreational permitting and reporting through Snapper Grouper Amendment 46; management actions considered for greater amberjack through Snapper Grouper Amendment 49; actions

considered for snowy grouper through Snapper Grouper Amendment 51; and actions considered for golden tilefish and blueline tilefish through Snapper Grouper Amendment 52. The AP will also provide information to develop a Fishery Performance Report for black sea bass, receive an update on Snapper Grouper Amendment 53 to revise catch levels and rebuilding for gag grouper, elect a chair and vice chair, and address other items as needed.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: March 28, 2022.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022-06841 Filed 3-30-22; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Invention Promoters/Promotion Firms Complaints

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0044 (Invention Promoters/Promotion Firms Complaints). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

**DATES:** To ensure consideration, comments regarding this information collection must be received on or before May 31, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information:

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0044 comment" in the subject line of the message.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Toni Krasnic, Office of Patents Stakeholder Experience, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7182; or by email at [toni.krasnic@uspto.gov](mailto:toni.krasnic@uspto.gov) with "0651-0044 comment" in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Pursuant to the Inventors' Rights Act of 1999, 35 U.S.C. 297, and implementing regulations at 37 CFR part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and responses from the invention promoters. Upon receipt of a complaint, the USPTO will forward it to the inventor promoter for a response. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms. Under the Act, USPTO is responsible for making complaints and responses available to the public on the USPTO's website.

A complaint submitted to the USPTO must be clearly marked, or otherwise identified, as a complaint. The complaint must include: (1) The name and address of the complaint; (2) the name and address of the invention promoter; (3) the name of the customer; (4) the invention promotion services offered or performed by the invention promoter; (5) the name of the mass media in which the invention promoter advertised providing such services; (6) and example of the relationship between the customer and the invention promoter; and (7) a signature of the complainant. Identifying information is necessary so that the USPTO can both forward the complaint to the invention promoter or promotion firm as well as notify the complainant that the complaint has been forwarded.

Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will be published without a response. The USPTO does not accept, under this program, complaints that request confidentiality.

This information collection contains one form, Complaint Regarding Invention Promoter (PTO/2048), which is used by the public to submit a complaint under this program. This form is available for download from the USPTO website. Use of this form is voluntary, and the complainant may submit his or her complaint without the form via any of the approved methods of collection as long as the complainant

includes the necessary information and the submission is clearly marked as a complaint filed under the Inventors' Rights Act. There is no associated form for submitting responses to a complaint.

**II. Method of Collection**

The items in this information collection may be submitted by mail to Mail Stop 24, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, or electronically via email at *innovationdevelopment@uspto.gov* with "Scam prevention complaint—submission" in the subject line.

**III. Data**

OMB Control Number: 0651-0044.

Form:

- PTO/2048 (Complaint Regarding Invention Promoter).

*Type of Review:* Extension and revision of a currently approved information collection.

*Affected Public:* Private sector; individuals or households.

*Respondent's Obligation:* Voluntary.

*Estimated Number of Annual Respondents:* 22 respondents.

*Estimated Number of Annual Responses:* 22 responses.

*Estimated Time per Response:* The USPTO estimates that the responses in this information collection will take the public approximately 15 minutes (0.25 hours) to 30 minutes (.5 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 8 hours.

*Estimated Total Annual Respondent Hourly Cost Burden:* \$517.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate <sup>1</sup> (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Complaint Regarding Invention Promoter (PTO/2048).	12	1	12	.25 (15 min) .....	3	\$52.93	\$159
Totals	.....	12	.....	12	.....	3	.....	159

TABLE 2—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate <sup>2</sup> (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
2	Response to the Complaint ..	10	1	10	.5 (30 min) .....	5	\$71.59	\$358
Totals	.....	10	.....	10	.....	5	.....	358

*Estimated Total Annual Respondent Non-Hourly Cost Burden:* \$51.

There are no capital start-up, maintenance costs, recordkeeping costs, or filing fees associated with this information collection. However, USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of postage costs, is \$50.

<sup>1</sup> The USPTO uses the mean hourly wage (\$52.93) for physical scientists according to the data from the Bureau of Labor Statistics' Occupational Employment Statistics program (occupational code 19-2099; <https://www.bls.gov/oes/current/oes192099.htm>).

<sup>2</sup> The USPTO uses the mean hourly wage (71.59) for Lawyers according to the data from the Bureau of Labor Statistics' Occupational Employment Statistics program (occupational code 23-1011; <https://www.bls.gov/oes/current/oes231011.htm>).

*Postage Costs*

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that 6 complaints will be received by first-class mail. The USPTO estimates that the average postage cost of first-class mail will be \$0.58, resulting in a total of \$4 for mailed complaints. The USPTO also estimates that it will receive 5 responses to complaints using overnight mail services. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.25, resulting in a total of \$46 for overnight mail service. Therefore, the USPTO

estimates the total mailing costs for this information collection at \$50.

**IV. Request for Comments**

The USPTO is soliciting public comments to:

(a) 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;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the



use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

**Kimberly Hardy,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2022–06765 Filed 3–30–22; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0084: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (“OIRA”), of the Office of Management and Budget (“OMB”), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before May 2, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website’s search function. Comments can be entered electronically by clicking on the

“comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038–0084, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:**

Philip Newsom, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5301; email: [pnewsom@cftc.gov](mailto:pnewsom@cftc.gov).

<sup>1</sup> 17 CFR 145.9.

**SUPPLEMENTARY INFORMATION:**

**Title:** Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (OMB Control No. 3038–0084). This is a request for an extension of a currently approved information collection.

**Abstract:** On April 3, 2012 the Commission adopted Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery), 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations)<sup>2</sup> pursuant to section 4s(j)<sup>3</sup> of the Commodity Exchange Act (“CEA”). The above regulations adopted by the Commission require, among other things, swap dealers (“SD”)<sup>4</sup> and major swap participants (“MSP”)<sup>5</sup> to develop a risk management program (including a plan for business continuity and disaster recovery and policies and procedures designed to ensure compliance with applicable position limits). The Commission believes that the information collection obligations imposed by the above regulations are essential to ensuring that swap dealers and major swap participants maintain adequate and effective risk management programs and policies and procedures to ensure compliance with position limits.

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. On January 28, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 4567 (“60-Day Notice”). The Commission did not receive any relevant comments on the 60-Day Notice.

**Burden Statement:** The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

**Estimated Number of Respondents:** 107.

<sup>2</sup> 17 CFR 23.600, 23.601, 23.602, 23.603, 23.606, and 23.607.

<sup>3</sup> 7 U.S.C. 6s(j).

<sup>4</sup> For the definition of SD, see section 1a(49) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

<sup>5</sup> For the definitions of MSP, see section 1a(33) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

*Estimated Average Burden Hours per Respondent:* 1,148.5 hours.

*Estimated Total Annual Burden Hours:* 122,889.5 hours.

*Frequency of Collection:* As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: March 25, 2022.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2022-06751 Filed 3-30-22; 8:45 am]

**BILLING CODE 6351-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2021-0006]

### Notice of Availability: Final Guidance on Alternative Test Methods and Integrated Testing Approaches

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Consumer Product Safety Commission (Commission or CPSC) is announcing the availability of a document titled, “Final Guidance for Industry and Test Method Developers: CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements.”

**FOR FURTHER INFORMATION CONTACT:** John Gordon, Toxicologist, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301-987-2025; email: [jgordon@cpsc.gov](mailto:jgordon@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261-1275, requires that hazardous substances bear certain cautionary statements on their labels. Manufacturers may perform toxicological tests to determine whether such products require cautionary labeling addressing the hazard. Although animals are still used in toxicological testing, most governmental agencies support reduced use of animals in testing, by promoting the acceptance of data from alternative test methods.

In 1997, the National Institute of Environmental Health Sciences (NIEHS), the National Toxicology Program (NTP), and 13 federal agencies (including CPSC) joined to form the Interagency Coordinating Committee for the Validation of Alternative Methods (ICCVAM). ICCVAM sponsors scientific

review of non-animal tests (known as New Approach Methodologies or NAMs) that may reduce, refine, or replace animal tests in evaluating potential hazards. Reviews from ICCVAM and other federal agencies can provide a basis for regulatory agencies, such as CPSC, to consider non-animal testing alternatives for use in regulatory decision making. In the past, CPSC staff relied upon ICCVAM’s validation of new alternative testing methods, as reliable test methods to determine compliance with the labeling requirements of the FHSA. However, ICCVAM no longer validates test methods.

In 2012, CPSC issued a policy on non-animal or alternative testing methods to support labeling requirements under the FHSA, as codified under 16 CFR 1500.232 (Animal Testing Policy). CPSC’s website lists current CPSC-accepted alternative test methods and their conditions of use.<sup>1</sup> Since 2012, new advancements in toxicological testing, and in particular with NAMs, have occurred. NAMs include *in vitro* (in test tube), *in chemico* (all chemical test, no biological material), or *in silico* (computer models) methods and approaches used to test for toxicological effects in place of animal testing. In some cases, NAMs are combined with other NAMs or existing *in vivo* (animal) data to form an “integrated approach to testing and assessment” (IATAs).

The Commission reaffirms its policy to find alternatives to traditional animal testing that replace animals, reduce the number of animals tested, and decrease the pain and suffering in animals associated with testing household products. As such, the Commission strongly encourages all agency stakeholders to submit for evaluation by CPSC staff any scientifically validated alternative test methods that do not require animal testing for determining compliance with the labeling requirements under the FHSA.

Because ICCVAM no longer validates test methods, to assist stakeholders, including the public, manufacturers, test method developers, and test laboratories in determining what test methods are deemed reliable for determining compliance with the labeling requirements under the FHSA, on March 31, 2021, the Commission published a Notice of Availability in the **Federal Register** and requested comments on “Proposed Guidance for Industry and Test Method Developers:

CPSC Staff Evaluation of Alternative Test Methods and Integrated Testing Approaches and Data Generated from Such Methods to Support FHSA Labeling Requirements” 86 FR 16704. CPSC received five comments that are addressed in the staff’s briefing package on the final guidance. The staff’s briefing package is available on CPSC’s website at NAM Final Guidance BVS ([cpsc.gov](https://www.cpsc.gov)).

The CPSC has finalized its guidance for industry and test method developers.<sup>2</sup> The final guidance informs the public of staff’s informational requirements and process for evaluating NAMs and IATAs. The final guidance does not prescribe a specific form of validation and explains that validation can be accomplished via several different processes. A method’s reliability includes reproducibility, repeatability, and robustness. In addition to the performance and applicability of the NAM/IATA, good scientific, technical, and quality practices will ensure that the overall process is more efficient and effective and leads to increased confidence in the proposed method. The final guidance also includes an optional NAM nomination form that can be used to organize information about a NAM or IATA for evaluation by CPSC staff. Such non-animal alternative test methods, if accepted by CPSC, would be considered reliable test methods for determining compliance with the labeling requirements under the FHSA. Additionally, CPSC would continue to list CPSC-accepted alternative test methods on CPSC’s website.

The final guidance will be available at: <https://www.regulations.gov> under docket number, CPSC-2021-0006, under “Supporting and Related Material,” and on the Commission’s website at: <https://www.cpsc.gov/Business-Manufacturing/Testing-Certification/Recommended-Procedures-Regarding-the-CPSCs-Policy-on-Animal-Testing>.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2022-06825 Filed 3-30-22; 8:45 am]

**BILLING CODE 6355-01-P**

<sup>1</sup> <https://www.cpsc.gov/Business-Manufacturing/Testing-Certification/Recommended-Procedures-Regarding-the-CPSCs-Policy-on-Animal-Testing/>.

<sup>2</sup> The Commission voted 4-0 to approve this notice.

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE****Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Diversity Questionnaire Form**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled AmeriCorps Diversity Questionnaire Form for review and approval in accordance with the Paperwork Reduction Act.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 2, 2022.

**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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sharron Tendai at 202-606-3904 or by email to [stendai@cns.gov](mailto:stendai@cns.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Comments**

A 60-day notice requesting public comment was published in the **Federal Register** on January 13, 2022 at 87 FR 2145. The comment period ended March 15, 2022. Twenty (20) public comments were received from the notice. Most of the comments focused on the purpose of the data collection, the ability or organizational capacity of partners to collect the requested data, the design of the data collection tool, the format of the tool, the usage of the data, the assessment of burden, and training and technical assistance.

Changes to the questionnaire include separating the requested data into two sections for project information and organizational information to be more user-friendly, adding additional basic organizational information to better track data in AmeriCorps’ systems, clarifying the instructions based on feedback, clarifying purpose and usage of the data to be collected, adding definitions based on feedback and aligning definitions with the rest of the revisions to the tool. The burden estimates are also increasing because AmeriCorps revised the amount of time estimated to complete the questionnaire from 30 minutes to 5 hours to account for the time it would take an organization to collect and analyze the data (previously not included) as well as time to complete the questionnaire. The burden has also increased as AmeriCorps also plans to use the Diversity Questionnaire in all of its programs (AmeriCorps State and National, Volunteers in Service to America (VISTA), National Civilian Community Corps (NCCC) and AmeriCorps Seniors) while the current OMB Control Number covers AmeriCorps State & National.

*Title of Collection:* AmeriCorps Diversity Questionnaire Form.

*OMB Control Number:* 3045-0193.

*Type of Review:* Renewal.

*Respondents/Affected Public:* Organizations OR State, Local or Tribal Governments.

*Total Estimated Number of Annual Responses:* 3,350.

*Total Estimated Number of Annual Burden Hours:* 16,750.

*Abstract:* This information collection addresses the diversity of two populations—the people being served by AmeriCorps resources and partners of AmeriCorps. It aims to collect the proposed reach of beneficiaries of the AmeriCorps investment, disaggregated by poverty status, as well as demographic information. It also collects demographic information about the Board of Directors, senior leadership

and staff of organizations that are applying for AmeriCorps resources. The demographic information is racial/ethnic identification, gender, LGBTQIA+, disability, and veterans’ status. This is a Revision to an Existing Collection. The revisions are intended to improve the tool based on public feedback as well as analysis of the first round of information collection. The revisions aim to clarify the intended use of the data, render the tool more user-friendly, improve instructions, clarify definitions and enable AmeriCorps to track the information more effectively. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2022.

Dated: March 25, 2022.

**Anna Mecagni,**

*Chief of Program Operations.*

[FR Doc. 2022-06761 Filed 3-30-22; 8:45 am]

**BILLING CODE 6050-28-P**

**DEPARTMENT OF EDUCATION****Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—National Center for Improving Teacher and Leader Professions To Better Serve Children With Disabilities**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the National Center for Improving Teacher and Leader Professions to Better Serve Children with Disabilities, Assistance Listing Number 84.325A. This notice relates to the approved information collection under OMB control number 1820-0028.

**DATES:**

*Applications Available:* March 31, 2022.

*Deadline for Transmittal of Applications:* May 31, 2022.

*Deadline for Intergovernmental Review:* July 29, 2022.

*Pre-Application Webinar Information:* No later than [April 5, 2022, the Office of Special Education and Rehabilitative Services (OSERS) will post details on pre-recorded informational webinars designed to provide technical assistance

to interested applicants. Links to the webinars may be found at [www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html](http://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html).

**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** December 27, 2021 (86 FR 73264) and available at [www.federalregister.gov/d/2021-27979](http://www.federalregister.gov/d/2021-27979). Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/fofo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

**FOR FURTHER INFORMATION CONTACT:** David Guardino, U.S. Department of Education, 400 Maryland Avenue SW, Room 5135, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-6209. Email: [David.Guardino@ed.gov](mailto:David.Guardino@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Full Text of Announcement

##### I. Funding Opportunity Description

*Purpose of Program:* The purposes of the program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, and youth with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

*Priority:* This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481).

*Absolute Priority:* For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34

CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*The National Center for Improving Teacher and Leader Professions to Better Serve Children with Disabilities. Background:*

Critical shortages in the educator workforce are occurring nationwide. These shortages are more common in special education and related services than in general education and threaten the quality of education and services students with disabilities are receiving (Billingsley & Bettini, 2019; Mason-Williams et al., 2020). Unfortunately, the COVID-19 global pandemic has only exacerbated these shortages (e.g., higher rates of retirement and resignation) (Carver-Thomas, 2022). COVID-19 has also had an inequitable impact on student outcomes. While students across the country experienced unprecedented levels of interrupted instruction and increased strain on their social-emotional well-being, certain groups of students were significantly more impacted. Students of color, students with disabilities, and those in poverty suffered the greatest impact (U.S. Department of Education, 2021). Adding to the complexity of the workforce shortages is that enrollment in preparation programs is down over 30 percent in the last 10 years (Espinoza et al., 2018). In addition to the shortage of special education professionals, there is a shortage of special education professionals of color. Research has shown the importance of diversifying the teaching workforce. All students benefit from a diverse educator workforce and students of color particularly benefit from a diverse educator workforce. For example, a study by Egalite et al. (2015) showed academic benefits when students of color and teachers of color share the classroom. Teachers of color and those with disabilities can serve as role models, mentors, and advocates for an increasingly diverse student population. Yet, research shows that while gains have been made in the recruitment of teachers of color, it is not keeping pace with an increasingly diverse student population (Carver-Thomas, 2018).

Roughly 90 percent of demand for teachers is due to teacher attrition, with nearly two-thirds of those leaving for reasons other than retirement, such as inadequate preparation and mentoring, low salaries, poor teaching conditions, and lack of administrative support (Espinoza et al., 2018). Whether they result from issues with recruitment, preparation, or retention, some States have lowered the requirements to obtain certification and licensure in teacher

and leader<sup>1</sup> professions. From 2015 to 2020, 10 States removed requirements for candidates to pass a basic skills test for admittance into educator preparation programs altogether (Putman & Walsh, 2021).

An important component in the preparation and retention of teachers and leaders is the opportunity to practice in structured clinical settings. Research has shown that teacher candidates perform better when the demographics at their school of employment are similar to the school where they did their student teaching, and those with 10 or more weeks of clinical practice were more likely to be teaching one year later versus those with fewer than 10 weeks of practice (Connely & Graham, 2009; Goldhaber et al., 2017). While many States have implemented policies to strengthen clinical practice, the overall impact on improved rigor is unchanged since 2015 (Putman & Walsh, 2021).

Hiring inadequately prepared and emergency certified teachers can have a negative impact on students' academic learning and social and emotional development, especially those with disabilities and those from racially and ethnically diverse backgrounds (Mason-Williams et al., 2020). Teachers need to be prepared to implement evidenced-based practices (EBPs),<sup>2</sup> high-leverage practices (HLPs),<sup>3</sup> and culturally and linguistically responsive practices, to improve student outcomes, especially those with disabilities and those from racially and ethnically diverse backgrounds. According to the 2019 Nation's Report Card, roughly half of Black and Hispanic students in 4th grade were reading at a basic level. Worse, only 30 percent of students with disabilities in 4th grade were reading at a basic level that same year and only 12 percent were proficient or above. In addition to producing poor student

<sup>1</sup> For the purpose of this priority, the term "teacher and leader" includes general and special education teachers, related service providers, and educational administrators of systems that provide services to children and youth with disabilities and their families.

<sup>2</sup> For the purposes of this priority, "evidence-based practices" means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

<sup>3</sup> For the purposes of this priority, "high-leverage practices" refers to a set of practices in special education that are essential to improving student learning and behavior and can be learned through coursework, deliberately practiced in clinical practice, and generalized in future field experiences. For more detailed information on high leverage practices, see *High-Leverage Practices in Special Education* at <https://highleveragepractices.org/>.

outcomes, underprepared or poorly prepared teachers are less likely to stay in the field, and when teachers leave, it hurts student-teacher relationships, wastes efforts and resources spent on professional development (PD), and costs the national education system more than \$8 billion annually (Espinoza et al., 2018).

Clearly, the shortage of teachers, and especially special education teachers, is a multifaceted systemic challenge for States that requires contextually appropriate strategies and unique solutions that involve the State educational agencies (SEAs), institutions of higher education (IHEs), and local educational agencies (LEAs) within States working in concert. SEAs, IHEs, and LEAs need technical assistance (TA) that will assist them to understand the changes they need to make to teacher and leader certification and licensure standards and program approval requirements to increase their ability to attract, prepare, and retain teachers and leaders, especially those from racially and ethnically diverse backgrounds. IHEs need support to undergo continuous improvement, refining their programs to ensure teachers and leaders are well prepared to implement EBPs, HLPs, and culturally and linguistically responsive practices to meet the needs of an increasingly diverse student population. Lastly, SEAs, IHEs, and LEAs need support to work together to improve and align personnel preparation systems to address shortages, diversify the workforce, and improve outcomes for all students, especially those from racially and ethnically diverse backgrounds and those with disabilities.

This absolute priority will advance the Secretary's priorities in the areas of addressing the impact of COVID-19 on students, educators, and faculty and supporting a diverse educator workforce and professional growth to strengthen student learning.

*Priority:*

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Center for Improving Teacher and Leader Professions to Better Serve Children with Disabilities. The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased IHE capacity to offer high-quality instruction for their teacher and leader candidates (which may include virtual and hybrid models if needed due to temporary school closures).

(b) Increased IHE capacity to offer high quality field experiences for their teacher and leader candidates (which may include virtual and hybrid models

if in-person instruction is needed due to temporary school closures).

(c) Increased IHE capacity to embed EBPs, and culturally and linguistically responsive practices that are aligned to State certification and licensure standards and program approval requirements into teacher and leader preparation programs.

(d) Improved capacity of SEAs, in collaboration with IHEs and LEAs, to track and evaluate the impact that changes to certification and licensure standards and program approval requirements have on their ability to attract, prepare, and retain teachers and leaders, especially those from racially and ethnically diverse backgrounds and those with disabilities.

(e) Increased SEA, IHE, and LEA capacity to use multiple data sources to inform continuous improvement and alignment of their personnel preparation systems to attract, prepare, and retain teachers and leaders, especially those from racially and ethnically diverse backgrounds and those with disabilities.

(f) Increased capacity of SEAs, IHEs, and LEAs to scale up and sustain implementation of existing plans that align teacher and leader preparation systems to improve outcomes for students with disabilities, especially those from racially and ethnically diverse backgrounds.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Ensure that IHE educator preparation programs are recruiting and preparing teachers and leaders, including those from racially and ethnically diverse backgrounds and those with disabilities consistent with applicable law (including Title VI of the Civil Rights Act), to implement EBPs, HLPs, and culturally and linguistically responsive practices to support improved outcomes for students with disabilities. To meet this requirement the applicant must—

(i) Demonstrate knowledge of the need for IHE teacher and leader preparation programs to provide high quality instruction and opportunities to practice, best practices, maximize flexibility, and provide continuity of education (which may include virtual and hybrid models if needed due to temporary school closures);

(ii) Present applicable national and State data demonstrating the current

needs of States to align personnel preparation standards and program approval requirements and the extent that they include EBPs, HLPs, and culturally and linguistically responsive practices;

(iii) Present applicable national and State data on teacher and leader shortages and attrition rates, especially those from racially and ethnically diverse backgrounds, as well as the current needs of States, LEAs, and IHEs to address these issues;

(iv) Demonstrate knowledge of current educational issues and policy initiatives relating to program approval, lack of licensure portability across States, and supports to augment faculty knowledge and skills on integrating EBPs and culturally and linguistically competent instruction into the teacher and leader preparation curriculum;

(v) Present information about the current need for recruitment and preparation of teachers and leaders, especially those from racially and ethnically diverse backgrounds consistent with applicable law (including Title VI of the Civil Rights Act), to address the complex roles they share in providing instruction in school-wide frameworks such as multi-tiered systems of support; and

(vi) Demonstrate knowledge of policies and practices that SEAs and IHEs can implement to improve and diversify teacher and leader professions consistent with applicable law (including Title VI of the Civil Rights Act), address shortages, and increase retention rates;

(2) Demonstrate knowledge of, and previous experience with, using effective approaches to disseminate knowledge, tools, and resources to SEAs, LEAs, IHEs, and TA providers; and

(3) Demonstrate knowledge of, and previous experience with, implementing TA strategies and delivering evidence-based PD to a variety of entities, including SEAs, LEAs, IHEs, other nonprofit organizations that provide teacher and leader preparation, and other TA providers.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes consistent with the intended outcomes specified in this notice; and

(ii) In Appendix A, the logic model<sup>4</sup> by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

*Note:* The following websites provide more information on logic models and conceptual frameworks: [www.osepideas.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework](http://www.osepideas.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework); <https://osepideasthatwork.org/evaluation?tab=eval-logic>; and [https://ies.ed.gov/ncee/edlabs/regions/central/pdf/REL\\_2021112.pdf](https://ies.ed.gov/ncee/edlabs/regions/central/pdf/REL_2021112.pdf).

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of systems change and capacity building within SEAs, LEAs, and IHEs, and EBPs that will inform the TA provided to SEAs, LEAs, and IHEs that undertake alignment and reform efforts;

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA; and

(iii) How the proposed project will incorporate current research and practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

<sup>4</sup> Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

(i) Its proposed approach to universal, general TA,<sup>5</sup> which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected impact of those products and services under this approach;

(ii) Its proposed approach to targeted, specialized TA,<sup>6</sup> which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected impact of those products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the SEA, IHE, and LEA levels; and

(C) The process by which the project will provide ongoing targeted TA to SEAs and IHEs currently engaged in aligning and improving their teacher and leader preparation systems. This targeted TA should support SEA capacity to scale up and sustain ongoing reform efforts and the continued alignment of certification and licensure standards and program approval requirements. Targeted TA should also support the IHE’s capacity to sustain teacher and leader preparation reform efforts to embed strategies, EBPs, and evidence-based frameworks to better prepare teachers and leaders to serve students with disabilities; use data from a variety of sources, including data from teachers and leaders who successfully exit these programs to inform ongoing

<sup>5</sup> “Universal, general TA” means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center’s website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>6</sup> “Targeted, specialized TA” means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

improvement efforts; and scale up reform efforts to additional IHEs or nonprofit organizations with teacher and leader preparation programs.

(D) The process the proposed project will use to collaborate with other relevant TA Centers and national organizations, as appropriate, to develop and implement targeted TA strategies in order to reduce duplication of effort and extend the reach of current TA providers;

(iii) Its proposed approach to intensive, sustained TA,<sup>7</sup> which must identify—

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distribution, that will receive the products and services designed under this approach;

(B) Its proposed approach to measure the readiness of the SEAs and IHE preparation programs to work with the project, including their commitment to systems change, alignment of the TA to their needs, current infrastructure, available resources, and ability to build capacity in SEAs and IHEs;

(C) The process by which the project will provide intensive, sustained TA<sup>8</sup> to SEAs and IHEs currently engaged in aligning and improving their teacher and leader preparation systems. This intensive TA should support SEA capacity to scale up and sustain ongoing reform efforts and the continued alignment of certification and licensure standards and program approval requirements. Intensive TA should also support the IHE’s capacity to sustain teacher and leader preparation reform efforts to embed strategies, EBPs, HLPs, and evidence-based frameworks to better prepare teachers and leaders to serve students with disabilities; use data from a variety of sources, including from teachers and leaders who successfully exit these programs to inform ongoing improvement efforts; and scale up reform efforts to additional IHEs or nonprofit organizations with teacher and leader preparation programs.

(6) Develop products and implement services that maximize efficiency. To

<sup>7</sup> “Intensive, sustained TA” means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. “TA services” are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

<sup>8</sup> For information on the activities of the current cooperative agreement, applicants should refer to <https://osepideasthatwork.org/find-center-or-grant/find-a-center/collaboration-effective-educator-development-accountability-and>.

address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration. The description should include how the proposed project will provide PD to other TA Centers and relevant OSEP-funded investments (e.g., 84.323A, 84.325C, 84.325D, and 84.325K grantees) on available tools and resources to leverage and extend the reach of its TA; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes (e.g., existing TA resources from other OSEP-funded TA Centers); and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies (e.g., social media), to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.<sup>9</sup> The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff

assignments for completing the plan.

The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project*;

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate, consistent with applicable law (including Title VI of the Civil Rights Act);

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) The proposed key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators including those who are racially and

ethnically diverse, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

*Note:* Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A virtual one-day intensive 3+2 review meeting during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

#### *Fourth and Fifth Years of the Project*

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider

<sup>9</sup> A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts with knowledge and experience in providing TA to improve personnel preparation programs. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

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## Waiver of Proposed Rulemaking:

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1462 and 1481.

*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 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (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 79 apply to all applicants except federally recognized Indian Tribes.

*Note:* The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* The Administration has requested \$90,200,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2022, of which we

intend to use an estimated \$3,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

*Maximum Award:* We will not make an award exceeding \$3,500,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 1.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses 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](http://www2.ed.gov/about/offices/list/ocfo/intro.html).

*Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning,



implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

#### 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 27, 2021 (86 FR 73264) and available at [www.federalregister.gov/d/2021-27979](http://www.federalregister.gov/d/2021-27979), which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in SAM.gov a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/fofo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

**2. Intergovernmental Review:** This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

**3. Funding Restrictions:** We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

**4. Recommended Page Limit:** The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the

table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

#### V. Application Review Information

**1. Selection Criteria:** The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) **Significance (10 points).**  
(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) **Quality of project services (35 points).**

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient

strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) **Quality of the project evaluation (20 points).**

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) **Adequacy of resources and quality of project personnel (15 points).**

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) **Quality of the management plan (20 points).**

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

**2. Review and Selection Process:** We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary 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, and compliance with grant conditions. The Secretary 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, the Secretary 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. Additional Review and Selection Process Factors:** In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of

applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

**4. Risk Assessment and Specific Conditions:** Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary 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.

**5. Integrity and Performance System:** If you are selected under this competition 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.

**6. 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 notify you informally, also.

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. Open Licensing Requirements:** Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For

additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, 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 the Secretary. 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 the Secretary under 34 CFR 75.118. The Secretary 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](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- *Program Performance Measure #1:* The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.

- *Program Performance Measure #2:* The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.

- *Program Performance Measure #3:* The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.

- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the

percentage of funds spent during the current fiscal year.

- *Long-term Program Performance Measure:* The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary 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; and, if the Secretary 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, the Secretary 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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package 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](http://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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Katherine Neas,**

*Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2022-06784 Filed 3-30-22; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Extension of the Application Deadline Date; Applications for the Supplemental Support Under the American Rescue Plan (SSARP)

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On February 3, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications for the Supplemental Support under the American Rescue Plan (NIA), Assistance Listing Number (ALN) 84.425T. The NIA established a deadline date of April 4, 2022, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until April 8, 2022.

**DATES:** *Deadline for Transmittal of Applications:* April 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B133, Washington, DC 20202-6450. Telephone: (202) 377-3711. Email: [HEERF@ed.gov](mailto:HEERF@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On February 3, 2022, we published an NIA

in the **Federal Register** (87 FR 6154) for the SSARP Program. The NIA established a deadline date of April 4, 2022, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until April 8, 2022.

On April 4, 2022, the Department is transitioning from use of the Data Universal Numbering System (DUNS) to the Unique Entity Identifier (UEI). To avoid any conflicts with submitting applications during the transition period, and to allow applicants more time to prepare and submit their applications, we are extending the deadline date for transmittal of applications. Applicants that submit applications on or before the original deadline date of April 4, 2022, may resubmit their applications on or before the new application deadline date of April 8, 2022, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted before the original application deadline. If a new application is submitted, the Department will consider the last application successfully submitted and received by 11:59:59 p.m., Eastern Time, on April 8, 2022.

*Note:* All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications.

*Program Authority:* CRRSAA Section 314(a)(3) and ARP section 2003.

*Accessible Format:* On request to the program contact listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, the NIA, and a copy of the application package 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](http://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](http://www.federalregister.gov).

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Michelle Asha Cooper,**

*Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 2022-06847 Filed 3-30-22; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Department of Energy hereby publishes a notice of open meeting on April 19, 2022, of the Secretary of Energy Advisory Board (SEAB). This meeting will be held virtually for members of the public and in-person at Lawrence Berkeley National Laboratory, 1 Cyclotron Rd., Berkeley, CA 94720 for SEAB members only.

**DATES:** Tuesday, April 19, 2022; 9 a.m.–2:50 p.m. Pacific Daylight Time.

**ADDRESSES:** Virtual meeting for members of the public. To track attendees, registration is required using the following link: <https://doe.webex.com/doe/j.php?RGID=rc773bfd5186ffd7ad48c9fedd0baee0>.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; phone: (202) 586-5260; email: [seab@hq.doe.gov](mailto:seab@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

*Background:* The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

*Purpose of the Meeting:* This is the third meeting of Secretary Jennifer M. Granholm's SEAB.

*Tentative Agenda:* The meeting will start at 9:00 a.m. Pacific Daylight Time on April 19, 2022. The tentative meeting agenda includes: Roll call, remarks from the Secretary, remarks from the SEAB chair, remarks on DOE's Justice-40 initiative, SEAB working group report-outs, and public comments. The

meeting will conclude at 2:50 p.m. The meeting times and content are subject to change. Meeting materials can be found here: <https://www.energy.gov/seab/seab-meetings>.

*Public Participation:* The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register here: <https://doe.webex.com/doe/j.php?RGID=rc773bfd5186ffd7ad48c9fedd0baee0>.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, [seab@hq.doe.gov](mailto:seab@hq.doe.gov), no later than 5:00 p.m. on Monday, April 18, 2022.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christopher Lawrence, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: [seab@hq.doe.gov](mailto:seab@hq.doe.gov).

*Minutes:* The minutes of the meeting will be available on the SEAB website or by contacting Mr. Lawrence. He may be reached at the above postal address or email address, or by visiting SEAB's website at [www.energy.gov/seab](http://www.energy.gov/seab).

Signed in Washington, DC, on March 25, 2022.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2022-06780 Filed 3-30-22; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-1440-000]

#### EdSan 1B Group 1 Sanborn, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EdSan 1B Group 1 Sanborn, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: March 25, 2022.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2022-06794 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-1441-000]

#### EdSan 1B Group 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EdSan 1B Group 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: March 25, 2022.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2022-06793 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC22-6-000]

#### Commission Information Collection Activities (FERC-714) Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission FERC-714, (Annual Electric Balancing Authority Area and Planning Area Report), which will be submitted to the Office of Management and Budget (OMB) for review.

**DATES:** Comments on the collection of information are due May 2, 2022.

**ADDRESSES:** Send written comments on FERC-714 to OMB through [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902-0140) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22-6-000) by one of the following methods:

Electronic filing through <http://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:*  
Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:*  
Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

*Instructions:* OMB submissions must be formatted and filed in accordance with submission guidelines at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Using the search function under the “Currently Under Review” field, select Federal Energy Regulatory Commission; click “submit,” and select “comment” to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/ferc-online/overview>.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202) 502-8663.

**SUPPLEMENTARY INFORMATION:**  
*Title:* FERC-714, Annual Electric Balancing Authority Area and Planning Area Report.

*OMB Control No.:* 1902-0140.

*Type of Request:* Three-year extension of the FERC-714 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The Commission uses the FERC-714 data to analyze power system operations. These analyses estimate the effect of changes in power system operations resulting from the installation of a new generating unit or plant, transmission facilities, energy transfers between systems, and/or new points of interconnections. The FERC-

714 data assists in providing a broad picture of interconnected balancing authority area operations including: Comprehensive information of balancing authority area generation, actual and scheduled inter-balancing authority area power transfers, and net energy for load, summer and winter generation peaks and system lambda. The Commission also uses the data to prepare status reports on the electric utility industry including a review of inter-balancing authority area bulk power trade information. The Commission uses the collected data from planning areas to monitor forecasted demands by electric utilities with fundamental demand responsibilities and to develop hourly demand characteristics.

*Type of Respondent:* Electric utility balancing authorities and planning areas in the United States.

*Estimate of Annual Burden:*<sup>1</sup> The Commission estimates the annual public reporting burden and cost <sup>2</sup> (rounded) for the information collection as follows:

**FERC-714**

[Annual Electric Balancing Authority Area and Planning Area Report]

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response	Total annual burden hours and total annual cost	Cost per respondent
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
176 .....	1	176	93.33 hrs.; \$7,279.74 .....	16,426.67 hrs.; \$1,281,280.26 ....	\$7,279.74

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 25, 2022.  
**Kimberly D. Bose,**  
*Secretary.*  
[FR Doc. 2022-06807 Filed 3-30-22; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 7679-009]

**Daniel N. Evans; James Bocell; Notice of Transfer of Exemption**

1. On February 24, 2022, Daniel N. Evans, exemptee for the 288-Kilowatt

Caroleen Mills Hydroelectric Project No. 7679, filed a letter notifying the Commission that the project was transferred from Daniel N. Evans to James Bocell. The exemption from licensing was originally issued on December 4, 1984.<sup>1</sup> The project is located on the Second Broad River in Rutherford County, North Carolina. The transfer of an exemption does not require Commission approval.

James Bocell is now the exemptee of the Caroleen Mills Hydroelectric Project No. 7679. All correspondence must be forwarded to: Mr. James Bocell, c/o Deal First Inc., 4600 Greenville, Suite 288, Dallas, TX 75206, Phone: 913-424-4576, Email: [bo@cgitx.com](mailto:bo@cgitx.com).

<sup>1</sup> Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

<sup>2</sup> The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics, May 2021, for the listed reporting requirements. These

figures include salary ([https://www.bls.gov/oes/current/naics2\\_22.htm](https://www.bls.gov/oes/current/naics2_22.htm)) and benefits <http://www.bls.gov/news.release/ecec.nr0.htm>) and are: Management (Code 11-0000), \$97.89/hr. Computer and mathematical (Code 15-0000), \$65.73/hr. Electrical Engineers (Code 17-2071), \$72.15/hr. Economist (Code 19-3011), \$75.75/hr. Computer and Information Systems Managers (Code 11-3021), \$103.61/hr. Accountants and Auditors (Code 13-

2011), \$57.41/hr. Transportation, Storage, and Distribution Managers (Code 11-3071), \$86.80/hr. Power Distributors and Dispatchers (Code 51-8012), \$63.74/hr. The average hourly cost (wages plus benefits) for the above wages is \$77.89/hour (rounded to \$78.00/hour).

<sup>1</sup> *Clearwater Hydro Company*, 29 FERC ¶ 62,224 (1984). Subsequently, the project was transferred to *Daniel N. Evans*, 106 FERC ¶ 62,116 (2004).

Dated: March 25, 2022.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2022-06806 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-1442-000]

#### EdSan 1B Group 3, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EdSan 1B Group 3, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: March 25, 2022.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2022-06785 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP21-45-000]

#### Florida Gas Transmission Company, LLC; Notice of Effectiveness of Withdrawal of Application

On January 29, 2021, Florida Gas Transmission Company, LLC (Florida Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) <sup>1</sup> for authorization to construct, own, and operate its Big Bend Project. On February 22, 2022, Florida Gas filed a notice of withdrawal of its application. No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,<sup>2</sup> the withdrawal of the application became effective on March 10, 2022, and this proceeding is hereby terminated.

Dated: March 25, 2022.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2022-06805 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

<sup>1</sup> 15 U.S.C. 717f(c).

<sup>2</sup> 18 CFR 385.216(b) (2021).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG22-72-000.

*Applicants:* Byrd Ranch Storage LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Byrd Ranch Storage LLC.

*Filed Date:* 3/24/22.

*Accession Number:* 20220324-5218.

*Comment Date:* 5 p.m. ET 4/14/22.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20-2119-001.

*Applicants:* ISO New England Inc., Versant Power.

*Description:* Compliance filing: ISO New England Inc. submits tariff filing per 35: Versant Power; ER20-2119—Joint Offer of Settlement to be effective N/A.

*Filed Date:* 3/25/22.

*Accession Number:* 20220325-5080.

*Comment Date:* 5 p.m. ET 4/15/22.

*Docket Numbers:* ER21-2919-002.

*Applicants:* Camp Grove Wind Farm LLC.

*Description:* Camp Grove Wind Farm LLC submits Compliance Filing as directed in February 25, 2022 Commission Letter Order.

*Filed Date:* 3/24/22.

*Accession Number:* 20220324-5206.

*Comment Date:* 5 p.m. ET 4/14/22.

*Docket Numbers:* ER22-1433-000.

*Applicants:* Borough of Chambersburg, Pennsylvania.

*Description:* Request for Prospective Waiver of Tariff Provisions.

*Filed Date:* 3/22/22.

*Accession Number:* 20220322-5197.

*Comment Date:* 5 p.m. ET 3/29/22.

*Docket Numbers:* ER22-1443-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3194R1 Prairie Breeze Wind Energy GIA to be effective 3/4/2022.

*Filed Date:* 3/25/22.

*Accession Number:* 20220325-5010.

*Comment Date:* 5 p.m. ET 4/15/22.

*Docket Numbers:* ER22-1444-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original NSA, SA No. 6383; Queue No. NQ-65 to be effective 2/28/2022.

*Filed Date:* 3/25/22.

*Accession Number:* 20220325-5027.

*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1445–000.  
*Applicants:* Daylight I, LLC.  
*Description:* § 205(d) Rate Filing: Facilities Use Agreements to be effective 5/25/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5055.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1446–000.  
*Applicants:* Southern California Edison Company.  
*Description:* § 205(d) Rate Filing: SCE Revision to Formula Rate Tariff Authorized 2022 PBOPs Expense Amount to be effective 1/1/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5060.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1447–000.  
*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.  
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2022–03–25\_SA 2686 Ameren-SIPC Adams Road Proj Spec 2 to be effective 5/25/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5076.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1448–000.  
*Applicants:* PECO Energy Company, PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: PECO Energy Company submits tariff filing per 35.13(a)(2)(iii): PECO submits Revisions to Att. H–7A regarding Formula Rate Template to be effective 5/27/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5083.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1449–000.  
*Applicants:* GB II Connecticut LLC.  
*Description:* Compliance filing: Notice of Succession and Submission of New eTariff Baseline and Tariff Revisions to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5099.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1450–000.  
*Applicants:* GB II New Haven LLC.  
*Description:* Compliance filing: Notice of Succession and Submission of New eTariff Baseline and Tariff Revisions to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5102.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1451–000.  
*Applicants:* Edwards Solar Line I, LLC.  
*Description:* § 205(d) Rate Filing: Certificates of Concurrence for Facilities Use Agreements to be effective 5/25/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5108.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1452–000.  
*Applicants:* Sanborn Solar Line I, LLC.  
*Description:* § 205(d) Rate Filing: Certificates of Concurrence for Facilities Use Agreements to be effective 5/25/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5112.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1453–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6387; Queue No. AG1–291 to be effective 2/23/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5141.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1454–000.  
*Applicants:* LI Solar Generation, LLC.  
*Description:* Baseline eTariff Filing: LI Solar Generation, LLC Application for Market-Based Rate Authorization to be effective 5/25/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5157.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1455–000.  
*Applicants:* Virginia Electric and Power Company.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5162.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1456–000.  
*Applicants:* Virginia Electric and Power Company.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5163.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1457–000.  
*Applicants:* Dominion Energy Generation Marketing, Inc.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5164.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1458–000.  
*Applicants:* Summit Farms Solar, LLC.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5166.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1459–000.  
*Applicants:* Scott-II Solar LLC.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5169.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1460–000.  
*Applicants:* Wilkinson Solar LLC.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5171.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1461–000.  
*Applicants:* Greenville County Solar Project, LLC.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5172.  
*Comment Date:* 5 p.m. ET 4/15/22.  
*Docket Numbers:* ER22–1462–000.  
*Applicants:* Hardin Solar Energy LLC.  
*Description:* Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.  
*Filed Date:* 3/25/22.  
*Accession Number:* 20220325–5173.  
*Comment Date:* 5 p.m. ET 4/15/22.  
 Take notice that the Commission received the following public utility holding company filings:  
*Docket Numbers:* PH22–8–000.  
*Applicants:* Canada Pension Plan Investment Board.  
*Description:* Canada Pension Plan Investment Board submits FERC 65–B Notice of Change in Fact to Waiver Notification.  
*Filed Date:* 3/24/22.  
*Accession Number:* 20220324–5216.  
*Comment Date:* 5 p.m. ET 4/14/22.  
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.  
 Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.  
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,



service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 25, 2022.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2022-06789 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-1439-000]

#### EdSan 1B Group 1 Edwards, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EdSan 1B Group 1 Edwards, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

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Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 14, 2022.

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docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: March 25, 2022.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2022-06788 Filed 3-30-22; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP22-92-000]

#### Venture Global Plaquemines LNG, LLC; Notice of Application To Amend and Establishing Intervention and Protest Deadline

Take notice that on March 11, 2022, Venture Global Plaquemines LNG, LLC (Plaquemines LNG), 1001 19th Street North, Suite 1500, Arlington, VA 22209, filed in the above referenced docket, an application pursuant to section 3 of the natural Gas Act (NGA) and Part 153, Subpart B, of the Commission's regulations for an amendment to the authorizations granted by the Commission on September 30, 2019 in Docket No. CP17-66-000. Those actions authorized Plaquemines LNG to site, construct, and operate a new liquefied natural gas (LNG) export terminal and associated facilities (Export Terminal) along the west bank of the Mississippi River in Plaquemines Parish, Louisiana.

In this amendment Plaquemines LNG proposes to increase the Export Terminal's peak achievable liquefaction capacity from 24.0 million metric tons per annum (MTPA) to 27.2 MTPA of

LNG under optimal operating conditions. Plaquemines LNG states that the requested increase in peak liquefaction capacity reflects refinements in the conditions and assumptions concerning the maximum potential output of the already authorized facilities and does not involve construction of any new facilities, new environmental permits (or amendments to existing permits) nor any modification of the authorized facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<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 FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this filing should be directed to Plaquemines LNG's outside counsel, Patrick Nevins of Latham & Watkins, LLP, 555 Eleventh Street NW, Suite 1000, Washington, DC 20004, telephone: (202) 637-3363.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,<sup>1</sup> within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all

<sup>1</sup> 18 CFR (Code of Federal Regulations) 157.9.

federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

### Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on April 15, 2022. How to file protests, motions to intervene, and comments is explained below.

#### Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,<sup>2</sup> any person<sup>3</sup> 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,<sup>4</sup> and must be submitted by the protest deadline, which is April 15, 2022. 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<sup>5</sup> and the regulations under the NGA<sup>6</sup> by the intervention deadline for the project, which is April 15, 2022.

<sup>2</sup> 18 CFR 157.205.

<sup>3</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>4</sup> 18 CFR 157.205(e).

<sup>5</sup> 18 CFR 385.214.

<sup>6</sup> 18 CFR 157.10.

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<sup>7</sup> motions to intervene are automatically granted by operation of Rule 214(c)(1).<sup>8</sup> 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.<sup>9</sup> 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 April 15, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

#### How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22-92-000 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](http://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

<sup>7</sup> The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

<sup>8</sup> 18 CFR 385.214(c)(1).

<sup>9</sup> 18 CFR 385.214(b)(3) and (d).

select "Protest", "Intervention", or "Comment on a Filing".

The Commission's *eFiling* staff are available to assist you at (202) 502-8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22-92-000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail at: Patrick Nevins of Latham & Watkins, LLP, 555 Eleventh Street NW, Suite 1000, Washington, DC 20004 or email (with a link to the document) at: [patrick.nevins@lw.com](mailto:patrick.nevins@lw.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](http://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](http://www.ferc.gov/docs-filing/esubscription.asp).

*Intervention Deadline:* 5:00 p.m. Eastern Time on April 15, 2022.

Dated: March 25, 2022.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2022-06804 Filed 3-30-22; 8:45 am]

**BILLING CODE 6717-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OAR-2021-0087; FRL-9706-01-OMS]

**Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Benzene Waste Operations (Renewal)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Benzene Waste Operations (EPA ICR Number 1541.13, OMB Control Number 2060-0183), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before May 2, 2022.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2021-0087, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2821T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-0833; email address: [ali.muntasir@epa.gov](mailto:ali.muntasir@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov>, or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

**Abstract:** The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Benzene Waste Operations (40 CFR part 61, subpart FF) apply to existing facilities and new facilities that generate waste containing benzene, such as chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and those owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) that receive wastes from the above facilities. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 61, subpart FF.

**Form Numbers:** None.

**Respondents/affected entities:**

Owners and operators of benzene waste facilities.

**Respondent's obligation to respond:**

Mandatory (40 CFR part 61, subpart FF).

**Estimated number of respondents:**

270 (total).

**Frequency of response:** Quarterly and annually.

**Total estimated burden:** 19,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** \$2,310,000 (per year), which includes \$0 in annualized capital/startup and/or operation & maintenance costs.

**Changes in the Estimates:** There is no change in burden from the most-

recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) based on a review of EPA's Toxics Release Inventory that supports the existing estimated number of respondents, the growth rate for this industry is very low or non-existent. Since there are no changes in the regulatory requirements and there is no significant industry growth, there is no significant change in the overall burden and there are also no changes in the capital/startup and/or operation and maintenance (O&M) costs. There is a slight increase in costs, which is wholly due to the use of updated labor rates. This ICR uses labor rates from the most-recent Bureau of Labor Statistics report (September 2020) to calculate respondent burden costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2022-06759 Filed 3-30-22; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9467-01-R2]

**Notice of Availability of Draft NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities Within the Commonwealth of Puerto Rico**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft NPDES general permit.

**SUMMARY:** The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency—Region 2 (EPA), is issuing this Notice of a Draft National Pollutant Discharge Elimination System (NPDES) general permit, PRR040000/PRR04000F, for discharges from small municipal separate storm sewer systems (small MS4s) from urbanized areas within the Commonwealth of Puerto Rico to waters of the United States. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of stormwater from small MS4 urbanized areas. A prior Notice of Availability of a draft general permit was issued by EPA on June 11, 2014. EPA has substantially modified the draft

general permit and is issuing a new draft general permit.

**DATES:** Public comments must be received on or before May 16, 2022. Within the comment period, interested persons may request a public hearing, pursuant to 40 CFR part 124, concerning the proposed draft permit. Requests for a public hearing must be sent or delivered in writing to the same address, as provided below, for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR part 124, EPA shall hold a public hearing if it finds, on the basis of the requests, a significant degree of public interest on the proposed draft permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Mail:* Multimedia Permits and Compliance Branch, U.S. EPA Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069.

2. *Email:* [Bosques.Sergio@epa.gov](mailto:Bosques.Sergio@epa.gov).

The draft permit is based on an administrative record available for public review at EPA, Region 2, Caribbean Environmental Protection Division, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069. A reasonable fee may be charged for copying requests. However, the draft general permit and fact sheet are available at EPA's website: <https://www.epa.gov/npdes-permits/npdes-permits-phase-2-stormwater-program-puerto-rico>.

**FOR FURTHER INFORMATION CONTACT:**

Additional information concerning the draft permit may be obtained between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday excluding holidays from: Sergio Bosques, Caribbean Environmental Protection Division, U.S. EPA, Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069; telephones: 787–977–5838 or 787–977–5870; or by email: [Bosques.Sergio@epa.gov](mailto:Bosques.Sergio@epa.gov). EPA encourages virtual communication as access to the office is limited at this time.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to issue the draft NPDES general permit for the discharge of stormwater from small MS4s to waters within the Commonwealth of Puerto Rico. The permit describes three distinct small MS4s, which include the conventional cities and towns; Non-

Conventional state, federal and other publicly-owned systems; and Non-Conventional transportation systems.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) Section 402(p)(3)(B)(iii) to ensure that pollutant discharges from small MS4s are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water quality requirements of the CWA. The term small municipal separate storm sewer system is available in 40 CFR 122.26(b). In addition, this term also includes systems similar to separate storm sewer systems and flood management conveyances in municipalities such as military bases, large hospital or prison complexes, highways, flood control pump stations, and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The draft general permit sets forth the requirements for the small MS4 to “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods.” (See CWA section 402(p)(3)(B)(iii)). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes that the implementation of best management practices (BMPs), designed to control storm water runoff from the MS4, is, generally, the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR. 122.44(k), the draft permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP), as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of the CWA also authorizes EPA to include in an MS4 permit “such other provisions as [EPA] . . . determines appropriate for control of . . . pollutants.” This provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166–67 (9th Cir. 1999); 64 FR. 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the draft permit contains the WQBELs, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA. EPA issued a final general permit to address stormwater discharges from small MS4s on June 13, 2016. The 2016 general permit required small MS4s to

develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. This draft permit continues to build on the requirements of the 2016 general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions of the MS4, and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permit reflect the iterative process of MEP. Accordingly, the draft general permit contains similar tasks and details of the 2016 general permit.

EPA has provided, in the draft general permit fact sheet, a summary of the permit conditions. The draft general permit and fact sheet are available at EPA's website: <https://www.epa.gov/npdes-permits/npdes-permits-phase-2-stormwater-program-puerto-rico>.

**Other Legal Requirements**

*A. Endangered Species Act (ESA)*

The provisions related to the ESA have been continued from those in the 2016 general permit. EPA will be requesting concurrence from the appropriate Federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) in connection with the 2021 draft and has renewed this request for the proposed draft general permit.

*B. Executive Order 12866*

EPA has determined that this draft general permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to the Office of Management and Budget (OMB) review.

*C. Paperwork Reduction Act*

The information collection requirements of this permit were previously approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0004.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA

prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b), and are therefore not subject to the RFA.

#### *E. Unfunded Mandates Reform Act*

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires federal agencies to assess the effects of their “regulatory actions” (defined to be the same as “rules” subject to the RFA) on tribal, state and local governments and the private sector. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and, are, therefore, not subject to the RFA or the UMRA.

*Authority:* This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

**Carmen R. Guerrero-Pérez,**

*Director, Caribbean Environmental Protection Division.*

[FR Doc. 2022–06656 Filed 3–30–22; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0116; FRL–9412–01–OCSPP]

### Certain New Chemicals or Significant New Uses; Statements of Findings for January 2022

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from January 1, 2022 to January 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact.* Rebecca Edelstein, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection

Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–1667 email address: [Edelstein.rebecca@epa.gov](mailto:Edelstein.rebecca@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](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### *A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

###### *B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0116, is available at <https://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

##### II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from January 1, 2022 to January 31, 2022.

##### III. What is the Agency’s authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term “conditions of use” is defined in TSCA section 3 to mean “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of “not likely to present an unreasonable risk of injury to health or the environment”

may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

#### IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that

such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the "not likely to present an unreasonable risk" finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
J-22-0001; J-22-0002; J-22-0003; J-22-0004; J-22-0005; J-22-0006.	Chromosomally-modified <i>Saccharomyces cerevisiae</i> (generic).	<a href="https://www.epa.gov/system/files/documents/2022-02/j-22-0001-0006_determination_non-cbi_final.pdf">https://www.epa.gov/system/files/documents/2022-02/j-22-0001-0006_determination_non-cbi_final.pdf</a> .
J-22-0007 .....	Strain of <i>Escherichia coli</i> modified with genetically-stable, plasmid-borne DNA for the production of plasmid-borne DNA (generic).	<a href="https://www.epa.gov/system/files/documents/2022-02/j-22-0007_determination_non-cbi_final.pdf">https://www.epa.gov/system/files/documents/2022-02/j-22-0007_determination_non-cbi_final.pdf</a> .
P-21-0128 .....	Fatty acids, C8-18 and C18-unsatd., mixed esters with C18-unsatd. fatty acid dimers, decanoic acid, octanoic acid and trimethylolpropane; CASRN 2411231-33-7.	<a href="https://www.epa.gov/system/files/documents/2022-02/p-21-0128_determination_non-cbi_final.pdf">https://www.epa.gov/system/files/documents/2022-02/p-21-0128_determination_non-cbi_final.pdf</a> .
P-21-0200 .....	Saturated and unsaturated hydrocarbon waxes, oxidized, polymers with alkenoic acid, alkyl alkanoate, alkenedioic acid, polyalkylene glycol ether with substituted carbomonocycle (alkylidene)bis-, polyalkylene glycol ether with substituted carbomonocycle (alkylidene)bis-, substituted carbomonocycle, disubstituted carbomonocycle and substituted heteropolycycle, alkyl peroxide-initiated (generic).	<a href="https://www.epa.gov/system/files/documents/2022-02/p-21-0200_determination_non-cbi_final_0.pdf">https://www.epa.gov/system/files/documents/2022-02/p-21-0200_determination_non-cbi_final_0.pdf</a> .

(Authority: 15 U.S.C. 2601 *et seq.*)

Dated: March 22, 2022.

**Madison Le,**

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022-06802 Filed 3-30-22; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0658; FRL-9707-01-OMS]

#### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Phosphate Fertilizer Industry (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Phosphate Fertilizer Industry (EPA ICR Number 1061.15, OMB Control Number 2060-0037), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently

approved through May 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before May 2, 2022.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2020-0658, to EPA online using <https://www.regulations.gov> (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the

proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0833; email address: [ali.muntasir@epa.gov](mailto:ali.muntasir@epa.gov).

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov>, or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

**Abstract:** Owners and operators of affected facilities are required to comply with the reporting and record keeping

requirements for the General Provisions of 40 CFR part 60, subpart A, as well as for the specific requirements in 40 CFR part 60, subparts T, U, V, W and X. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or for any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Phosphate fertilizer manufacturing facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 60, subparts T, U, V, W, and X).

*Estimated number of respondents:* 13 (total).

*Frequency of response:* Semiannually.

*Total estimated burden:* 1,390 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$484,000 (per year), which includes \$320,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the estimates:* There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup and/or operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2022-06835 Filed 3-30-22; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0663; FRL-9708-01-OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Synthetic Fiber Production Facilities (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Synthetic Fiber Production Facilities (EPA ICR Number 1156.15, OMB Control Number 2060-0059), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before May 2, 2022.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2020-0663, to EPA online using <https://www.regulations.gov> (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-0833; email address: [ali.muntasir@epa.gov](mailto:ali.muntasir@epa.gov).

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA

will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov>, or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

*Abstract:* Owners and operators of synthetic fiber production facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable specific standards found at 40 CFR part 60, subpart HHH. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Synthetic fiber production plants with a solvent-spun, synthetic fiber process that produce more than 500 megagrams (Mgs) of fiber per year.

*Respondent's obligation to respond:* Mandatory (40 CFR part 60, subpart HHH).

*Estimated number of respondents:* 22 (total).

*Frequency of response:* Initially, semiannually, and quarterly.

*Total estimated burden:* 1,880 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$388,000 (per year), which includes \$165,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or

operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2022-06832 Filed 3-30-22; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK

### Sunshine Act Meetings; Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

**TIME AND DATE:** Thursday, April 14, 2022, at 9:30 a.m.

**PLACE:** The meeting will be held via teleconference.

**STATUS:** The meeting will be open to public observation for Item Number 1.

**MATTERS TO BE CONSIDERED:** EXIM Medium- and Long-term Domestic Finance Initiative.

**CONTACT PERSON FOR MORE INFORMATION:**

Joyce B. Stone (202-257-4086). Members of the public who wish to attend the meeting via teleconference must register via using the link below:

[https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw.pHLqbjVTrkuy\\_9KepKN6dQ.MFtnLzltSEGI6EQECdI5iQ.jw0mEB4nbEWEHA3ZPbwqwg.BKzFZMMTLU2RBwkLSt7EDQ.rRf9k111EqCfQg80ebrDw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527](https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw.pHLqbjVTrkuy_9KepKN6dQ.MFtnLzltSEGI6EQECdI5iQ.jw0mEB4nbEWEHA3ZPbwqwg.BKzFZMMTLU2RBwkLSt7EDQ.rRf9k111EqCfQg80ebrDw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527)

by noon Wednesday April 13, 2022.

After completing the registration, Individuals will receive a confirmation email containing information about joining the webinar.

**Joyce B. Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2022-06854 Filed 3-29-22; 8:45 am]

**BILLING CODE 6690-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 20-270; FR ID 79350]

### Schedule of Application Fees of the Commission's Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission announces new application fee rates for the Wireless Telecommunications Bureau. These application fee rates were adopted and released in a Commission rulemaking on December 29, 2020.

**DATES:** New application fee rates will be updated on April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418-0444.

**SUPPLEMENTARY INFORMATION:** The Commission adopted new application fee rates in a *Report and Order*, FCC 20-184, MD Docket No. 20-270, adopted on December 23, 2020, released on December 29, 2020, and published in the *Federal Register* on March 19, 2021 (86 FR 15026, March 19, 2021). This document provides notice that new application fee rates will become updated on April 19, 2022 for the Wireless Telecommunications Bureau.

DA 22-307

Released: March 23, 2022

### Effective Date of New Application Fee Rates for the Wireless Telecommunications Bureau

#### MD Docket No. 20-270

On December 23, 2020, the Commission adopted a Report and Order implementing a new application fee schedule which significantly updated the Commission's previous fee schedule.<sup>1</sup> As indicated in the *2020 Application Fee Report and Order*, the new application fee rates will become effective when the Commission's "information technology systems and internal procedures have been updated, and the Commission publishes notice(s) in the *Federal Register* announcing the effective date of such rules."<sup>2</sup> On July 6, 2021, the Commission announced the new application fee rates for the Office of Engineering and Technology and the Media Bureau would become effective on July 15, 2021,<sup>3</sup> and on December 15, 2021, the Commission announced the new application fee rates for the

<sup>1</sup> See *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089 (2020) (*2020 Application Fee Report and Order*). Pursuant to section 8(b)(1) of the Communications Act of 1934, as amended, the Commission is required to review the application fee schedule in every even-numbered year, adjust the fees to reflect increases or decreases in the Consumer Price Index, and round to the nearest \$5 increment. See 47 U.S.C. 158(b)(1). In addition to the adjustments required by subsection (b), the Commission shall also, by rule, amend the schedule of application fees established if the Commission determines that the schedule requires amendment so that: (1) Such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. See 47 U.S.C. 158(c).

<sup>2</sup> *2020 Application Fee Report and Order* at 15155, paragraph 201.

<sup>3</sup> See *Effective Date of New Application Fees for the Office of Engineering and Technology and the Media Bureau*, MD Docket No. 20-270, Public Notice, DA 21-747 (OMD 2021).

Wireline Competition Bureau, the Enforcement Bureau, the International Bureau, and CALEA Petitions would become effective on December 15, 2021.<sup>4</sup> This Public Notice announces that the new application fee rates for the Wireless Telecommunications Bureau, codified at 47 CFR 1.1102, will become effective on April 19, 2022.<sup>5</sup> Wireless application fees can be paid through the Commission's Universal Licensing System (ULS) at <https://www.fcc.gov/wireless/universal-licensing-system>.<sup>6</sup>

For further guidance regarding Wireless Telecommunications Bureau application fees, please refer to the Wireless Telecommunications Bureau Fee Filing Guide located at <https://www.fcc.gov/licensing-databases/fees/application-processing-fees>. For further information regarding this Public Notice, please contact Roland Helvajian, Program Analyst, Financial Operations, Office of the Managing Director, [Roland.Helvajian@fcc.gov](mailto:Roland.Helvajian@fcc.gov).

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2022-06801 Filed 3-30-22; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 22-122; DA 22-285; FR ID 78964]

**Arm & Rage, LLC, WJBE(AM), Powell, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) commences a proceeding to determine whether the license of Arm & Rage, LLC (A&R) for WJBE(AM), Powell, Tennessee, Facility ID No. 59693 should be revoked pursuant to sections 312(a) and (c) of the Communications Act of 1934, following the felony conviction of its sole

<sup>4</sup> See *Effective Date of New Application Fees for the Enforcement Bureau, the Wireline Competition Bureau, and the International Bureau*, MD Docket No. 20-270, Public Notice, DA 21-1496 (OMD 2021). Note that, on December 15, 2021, the Commission decommissioned and permanently discontinued its in-house online electronic payment system known as Fee Filer and replaced it with a new payment module contained in the Commission's Registration System (CORES). See *FCC Announces Decommissioning of Fee Filer as Method of Payment and Replacement with New Payment Module within CORES and Decommissioning of the Commission's Red Light Display System and Replacement with a New Module within CORES*, Public Notice (Dec. 1, 2021).

<sup>5</sup> 47 CFR 1.1102.



member, Joseph Armstrong (Armstrong) for filing a false federal income tax return. The hearing will also consider the effect, if any, of A&R's late reporting of the conviction and late-filing of other information required to be placed in its online public inspection file.

**DATES:** A&R, in person or by counsel, shall file with the Commission, by April 11, 2022, a written appearance stating that it will appear on the date fixed for hearing and present evidence on the issues specified therein. Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than May 2, 2022.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Albert Shuldiner, Media Bureau, (202) 418-2721.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, MB Docket No. 22-122, adopted and released on March 21, 2022. The full text of this document is available online at <http://apps.fcc.gov/ecfs/>. The full text of this document is also available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

### Synopsis

1. In this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, the Federal Communications Commission (Commission) commences a hearing proceeding before the Administrative Law Judge to determine whether the license of A&R for WJBE(AM), Powell, Tennessee should be revoked pursuant to sections 312(a) and (c) of the Act 47 U.S.C. 312(a), (c), following the felony conviction of its sole member, Armstrong. The conviction raises the question under the Commission's *Character Qualifications Policy Statement* of whether Armstrong, and hence A&R, possesses the requisite character qualifications to remain a licensee of the Commission.

2. On August 8, 2016, a jury convicted Armstrong of one felony count of fraud and false statements under 26 U.S.C. 7206(1) for filing a false federal income tax return. The record of the criminal trial reflects that the jury heard evidence that Armstrong, an elected representative in the Tennessee legislature, purchased cigarette tax

stamps in 2007 and sold them at a profit of approximately \$330,000 following the legislature's increase in the state's cigarette tax, but did not include the profit on his federal 2008 individual income tax return. On January 25, 2017, Armstrong was sentenced to three years of probation, which included six months of house arrest, ordered to pay \$99,943 in restitution to the federal government and a \$40,000 fine, and required to perform 300 hours of community service.

3. Pursuant to § 1.65(c) of the Commission's rules, 47 CFR 1.65(c), A&R was required to report the conviction as an adverse finding by April 1, 2017, *i.e.*, the anniversary of license renewal filings for Tennessee. A&R submitted a document informing the Commission of the conviction (Adverse Finding Report) on April 14, 2017, after the due date. A&R, on March 18, 2020, also attached the same Adverse Finding Report to a timely application for license renewal, File No. 0000108293 (Renewal Application), to explain its answer of "No" to the question as to whether A&R could certify that there had been no adverse findings bearing on the character qualifications of A&R and its principal. A&R also responded "No" to the Renewal Application's question of whether it had timely uploaded required documents to its online public inspection file. Specifically, A&R acknowledged that it had neither filed Biennial Ownership Reports as required by § 73.3615 of the Commission's rules, 47 CFR 73.3615, nor timely uploaded issues/programs lists as required by § 73.3526 of the Commission's rules, 47 CFR 73.3526.

4. Armstrong's felony conviction raises the question under the Commission's *Character Qualifications Policy Statement* of whether he, and thus A&R, has the character qualifications to remain a Commission licensee. The Commission and the courts have recognized that the FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing. The felony of which Armstrong was convicted—fraud and false statements—is centered upon criminally dishonest conduct. Armstrong directed that dishonesty at a federal agency by making false statements on a federal tax form. His omission of material financial information (a large profit), resulted in substantial inaccuracy of information that he was federally required to report (total income on which tax liability is based). In light of Armstrong's past willingness to conceal information from another federal agency in violation of

the law, we are unable to conclude on the record before us that Armstrong's criminal conviction is not disqualifying. In addition, A&R's late reporting of Armstrong's conviction to the Commission, along with its self-reported and purportedly inadvertent failure to file ownership reports and to upload issues/programs lists between 2018 and 2020, when considered along with the felony, heighten our concern as to whether we can rely upon A&R to provide complete and accurate information to the Commission. Because Armstrong's conviction, separately, and together with A&R's admitted rule violations, raises questions under the Commission's *Character Qualifications Policy Statement*, we designate for hearing appropriate issues to determine whether Armstrong, and by extension, A&R, possesses the requisite character qualifications to remain a Commission licensee and whether the Commission should revoke the license for WJBE(AM).

5. The Commission will hold A&R's Renewal Application in abeyance pending the outcome of the hearing. If the underlying license is revoked, the Renewal Application will be dismissed as moot. If the license is not revoked, the Commission would need to determine whether the Renewal Application should be granted, denied, or granted subject to appropriate terms and conditions, as described in section 309(k)(2) of the Act, 47 U.S.C. 309(k)(2).

6. All parties shall file a timely notice of appearance in accordance with the Rules. Any person or entity seeking status as a party in this proceeding must file a petition to intervene or petition for leave to intervene in accordance with § 1.223 of the Commission's rules, 47 CFR 1.223.

7. Accordingly, *it is ordered* that, pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a), (c) and § 1.91(a) of the Commission's rules, 47 CFR 1.91(a) and pursuant to authority delegated under §§ 0.61 and 0.283 of the Commission's rules, 47 CFR 0.61, 0.283, Arm & Rage, LLC *is hereby ordered to show cause* why its authorization for WJBE(AM), Powell, Tennessee *should not be revoked* in a proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

(a) To determine the effects, if any, of Joseph Armstrong's felony conviction on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee;

(b) To determine the effects, if any, of Arm & Rage, LLC's failure to report the

conviction by the April 1, 2017 due date, to upload required information to an online public inspection file, and to file timely ownership reports on its qualifications to be a Commission licensee; and

(c) To determine whether, pursuant to section 312 of the Communications Act of 1934, as amended, 47 U.S.C. 312, the license of Arm & Rage, LLC for WJBE(AM), Powell, Tennessee should be revoked.

8. *It is further ordered* that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(c), and § 1.91(c) of the Commission's rules, 47 CFR 1.91(c), in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Arm & Rage, LLC and/or Joseph Armstrong, in person or by an attorney, *shall file* on or before April 11, 2022 a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

9. *It is further ordered*, pursuant to § 1.92(a) and (c) of the Commission's rules, that if Arm & Rage, LLC and/or Joseph Armstrong fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

10. *It is further ordered* that the Chief, Enforcement Bureau, *is made a party* to this proceeding without the need to file a written appearance.

11. *It is further ordered* that, in accordance with section 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. 312(d), and § 1.91(d) of the Commission's rules, 47 CFR 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof *shall be* upon the Commission's Enforcement Bureau.

12. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Electronic service on the Enforcement Bureau shall be made using the following email address: [EBHearings@fcc.gov](mailto:EBHearings@fcc.gov).

13. *It is further ordered* that copies of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing shall be sent* via Certified Mail, Return Receipt Requested, and by regular first-class mail to Arm & Rage, LLC and Joseph Armstrong, 2340 Martin Luther King Ave., Knoxville, TN 37914 and James L. Winston, Esq., Ruben, Winston, Diercks, Harris & Cooke, LLP, P.O. Box 20036, Suite 700, Washington, DC 20036.

14. *It is further ordered* that the Secretary of the Commission shall cause to have this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

**Thomas Horan**

*Chief of Staff, Media Bureau.*

[FR Doc. 2022-06811 Filed 3-30-22; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 22-319; FR ID 79826]

### Announcement of Next Meeting of the Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting date, time, and agenda of the FCC Consumer Advisory Committee (Committee), a federal advisory committee established under the Federal Advisory Committee Act (FACA).

**DATES:** April 26, 2022, from 1 p.m. to 3 p.m. EST.

**ADDRESSES:** The meeting will be held remotely using an internet videoconferencing platform and publicly available for viewing via a live stream on the Commission's website.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554; phone: 202-418-2809 (voice or Relay); email: [scott.marshall@fcc.gov](mailto:scott.marshall@fcc.gov); or Gregory V. Haledjian, Deputy Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554; phone: 202-

418-7440; email: [gregory.haledjian@fcc.gov](mailto:gregory.haledjian@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 22-319, released March 25, 2022, announcing the date, time, and agenda of the Committee's April 26, 2022 meeting. At this meeting, the Committee will hear from the FCC Chairwoman and Commissioners {invited} and FCC staff regarding matters of interest to consumers and will consider and vote on a Recommendation regarding Consumer Broadband Labels.

This meeting will be conducted in a wholly electronic format using an internet videoconference platform. The meeting will be open to members of the public and available via live stream at [www.fcc.gov/live](http://www.fcc.gov/live). The FCC will post about the event on the agency's social media channels including Twitter (@FCC) and Facebook ([www.facebook.com/fcc](http://www.facebook.com/fcc)) in advance of the event and during the live stream. Members of the public may submit questions that arise during the meeting to [livequEDTions@fcc.gov](mailto:livequEDTions@fcc.gov).

Open captioning will be provided for the live stream. Other reasonable accommodations for people with disabilities are available upon request. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Consult the Committee's web page at [www.fcc.gov/consumer-advisory-committee](http://www.fcc.gov/consumer-advisory-committee) for further Committee information.

Comments to the Committee may be submitted through the Designated Federal Officer or the Deputy Designated Federal Officer at the above email addresses.

Federal Communications Commission.

**Gregory Haledjian,**

*Legal Advisor, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2022-06814 Filed 3-30-22; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, April 5, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on April 7, 2022.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

\* \* \* \* \*

**CONTACT PERSON FOR MORE INFORMATION:**

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

*Authority:* Government in the Sunshine Act, 5 U.S.C. 552b.

**Vicktoria J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2022-06936 Filed 3-29-22; 4:15 pm]

**BILLING CODE 6715-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than April 15, 2022.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Elizabeth Bosshard-Blackey 2022 Irrevocable Bank Trust, u/a/d January 7, 2022, Andrew R. Bosshard, as trustee, both of La Crosse, Wisconsin; and*

*Piercarlo Valdesolo, South Pasadena, California; to become members of the Bosshard Family Control Group, a group acting in concert, to acquire voting shares of Bosshard Financial Group, Inc., La Crosse, Wisconsin, and thereby indirectly acquire voting shares of One Community Bank, Oregon, Wisconsin, and Farmers State Bank-Hillsboro, Hillsboro, Wisconsin.*

2. *The MCM BAA Investment Trust, Kristine M.P. Martin and Tye J. Klooster, as co-trustees, William Seth Martin, as business advisor and trust protector, and the WSM BAA Family Trust, Michael Carl Martin, as trustee, all of Ann Arbor, Michigan; to become members of the Martin Family Control Group, a group acting in concert, to acquire voting shares of Arbor Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Ann Arbor, both of Ann Arbor, Michigan.*

Board of Governors of the Federal Reserve System, March 28, 2022.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2022-06812 Filed 3-30-22; 8:45 am]

**BILLING CODE 6210-01-P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090-0044; Docket No. 2021-0001; Sequence No. 14]**

### Submission for OMB Review; Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453

**AGENCY:** Public Buildings Service, General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

**DATES:** *Submit comments on or before:* May 2, 2022.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under

Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Handsfield, Public Buildings Service, at telephone 202-208-2444, or via email to [karen.handsfield@gsa.gov](mailto:karen.handsfield@gsa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The general public uses Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

**B. Annual Reporting Burden**

*Respondents:* 8,000.

*Responses per Respondent:* 1.

*Hours per Response:* 0.05.

*Total Burden Hours:* 400.

**C. Public Comments**

A 60-day notice published in the **Federal Register** at 86 FR 67471 on November 26, 2021. No comments were received.

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite OMB Control No. 3090-0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence.

**Beth Anne Killoran,**

*Deputy Chief Information Officer.*

[FR Doc. 2022-06776 Filed 3-30-22; 8:45 am]

**BILLING CODE 6820-34-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-22-0134]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) submitted the information collection request titled "International Travel: Illness and Death Reports for Foreign Quarantine Regulations (42 CFR part 71)" to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public

Comment and Recommendations” notice on January 8, 2022 to obtain comments from the public and affected agencies. CDC received one comment in the information collection request. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

#### Proposed Project

*International Travel: Illness and Death Reports for Foreign Quarantine Regulations* (42 CFR part 71)—Revision—National Center for Emerging Zoonotic and Infectious Diseases

(NCEZID), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Section 361 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. Statute and the existing regulations governing foreign quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances and persons in order to protect the public’s health. Other inspection agencies, such as Customs and Border Protection (CBP), assist quarantine officers in public health screening of persons and make referrals to quarantine station staff when indicated. These practices and procedures ensure protection against the introduction and spread of communicable diseases into and within the United States with a minimum of recordkeeping and reporting procedures, as well as a minimum of interference with trade and travel.

U.S. Quarantine Stations are located at 20 ports of entry that include both airports and land border crossings where international travelers arrive. The jurisdiction of each station includes air, maritime, and/or land-border ports of entry. Quarantine Station staff work in partnership with international, federal, state, and local agencies and organizations to fulfill their mission to reduce morbidity and mortality among immigrants, refugees, travelers, expatriates, and other globally mobile populations. This work is performed to prevent the introduction, transmission, and spread of communicable diseases from foreign countries into the United States or from one State or possession to another State or possession. When an illness suggestive of a communicable disease is reported by conveyance operators or port partners (*e.g.*, Customs and Border Protection), Quarantine Officers respond to carry out an onsite public health assessment and collect data from the individual. This response may occur jointly with port partners. The collection of comprehensive, pertinent public health information during these responses enables Quarantine Officers to make an accurate public health assessment and identify appropriate next steps. For this reason, quarantine station staff need to

systematically interview ill travelers and collect relevant health and epidemiologic information.

When Quarantine Officers are present at the port of entry, they may often respond in person to conduct assessment of an ill traveler. However, there are many instances in which a Quarantine Officer may not be able to meet a conveyance or border crosser in person, including (but not limited to) the following: The conveyance arrives at a port of entry that does not have a Quarantine Station on site; a maritime vessel is still out at sea when the report comes in; Quarantine Officers are already responding to another illness report; or the illness may be reported after hours and Quarantine Officers cannot arrive in time to meet the conveyance or border crosser without causing substantial delays to travel. If Quarantine Officers are unable to respond in-person, they provide phone consultation to port partners (*e.g.*, Emergency Medical Services (EMS), DHS/CBP, and maritime partners such as ship medical personnel) on the scene, to determine the public health importance of the illness. In both circumstances, an interview of the ill person(s) is required to conduct the public health assessment, whether in-person, by phone, or through a trained responder (in consultation with the Quarantine Officer).

Data collected by Quarantine staff during the initial report of illness or death, and during the follow-up using the illness or death response forms, is entered into the Quarantine Activity Reporting System (QARS). QARS is a secure internet database implemented in June 2005 to document and track the illnesses and deaths reported to Quarantine Stations that occurred on conveyances entering the United States and at land border crossings.

Previously this information collection also included information collections related to regulating importations of animals and human remains, and animal products. CDC plans to consolidate and submit an information collection related to importations into a new and separate information collection request. CDC is also pausing approval of the Air Travel Illness or Death Investigation Form previously approved in this package, since it is currently approved under OMB Control 0920-1318.

CDC requests OMB approval for an estimated 3,595 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Maritime Vessel Operator .....	42 CFR 71.21(a) report of illness or death from ships—Maritime Conveyance Illness or Death Investigation Form Sections 1–4.	500	1	10/60
Maritime Vessel Operator .....	42 CFR 71.21(a) report of illness or death from ships—Maritime Conveyance Illness or Death Investigation Form Section 5.	100	1	5/60
Maritime Vessel Operator .....	Cumulative Influenza/Influenza-Like Illness (ILI).	3,000	1	2/60
Maritime Vessel Operator .....	42 CFR 71.35 Report of death/illness during stay in port (No Form).	5	1	30/60
Pilot in command .....	42 CFR 71.21(b) Death/illness reports from aircrafts (No form).	79,500	1	2/60
Traveler .....	Land Travel Illness or Death Investigation Form.	3,000	1	15/60
Isolated or Quarantined individuals .....	42 CFR 71.33 Report by persons in isolation or surveillance (No Form).	11	1	3/60

**Jeffrey M. Zirger,**

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022-06910 Filed 3-29-22; 4:15 pm]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Community Living**

**Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; the National Survey of Older Americans Act Participants Module on Emergency Preparedness; OMB 0985-0023**

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice solicits comments on the addition of a new rotating module on Emergency Preparedness to be added to the currently approved National Survey of Older Americans Act Participants used by ACL to measure program performance for programs funded under Title III of the Older Americans Act.

**DATES:** Submit written comments on the collection of information by May 2, 2022.

**ADDRESSES:** Submit written comments and recommendations for the proposed

information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) Find the information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

**FOR FURTHER INFORMATION CONTACT:** Terrill Curtis, Administration for Community Living, Washington, DC 20201, by email at [Terrill.Curtis@acl.hhs.gov](mailto:Terrill.Curtis@acl.hhs.gov) or by telephone at 202-795-7420.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Administration for Community Living (ACL) is requesting approval for a rotating module on Emergency Preparedness to be added to the currently approved National Survey of Older Americans Act (OAA) Participants. The purpose of adding questions on emergency preparedness to the NSOAAP is to measure the extent to which older adults have received training on, and are prepared for, an emergency event.

Older adults often have unique needs during an emergency or crisis. For example, they may have mobility challenges and/or chronic health conditions, or they may not have any family or friends nearby to support them. Support services that an older adult relies on to live at home, such as help from family caregivers, in-home health care, and home delivered meals,

may be unavailable due to the disaster. These conditions increase a person’s vulnerability and may lead to nursing home care that may have been otherwise avoidable. In addition, older adults may be hearing or vision impaired or have a cognitive impairment such as dementia, which may make it difficult to access and respond to emergency directions. The assessment of emergency preparedness levels among the OAA population is necessary to prevent injuries, to plan assistance strategies, and to increase resilience for older Americans.

ACL is requesting approval for a module on Emergency Preparedness to be added to the currently approved NSOAAP data collection effort. This module on Emergency Preparedness was originally included in the 60-day FRN on November 17, 2020 (85 FR 73273). However, due to the ongoing health crisis older adults were experiencing because of COVID-19, a module on the pandemic was added to the 2021 NSOAAP instead of the Emergency Preparedness module.

The data will be used by the Administrator of the Administration for Community Living/Assistant Secretary for Aging to:

- Help States and AAAs to structure their programs and services to better prepare OAA clients for emergencies.
- Provide secondary data for analysis of the level of preparedness among OAA clients in the event of disasters such as natural disasters; public health emergencies; man-made disasters; and technological emergencies.
- Identify gaps in emergency preparedness at the national level that may disproportionately affect the most vulnerable OAA clients such as those living in rural areas, having income

below the poverty level, belonging to a racial or ethnic minority group, and/or having a disability.

Descriptions of previous National Surveys of OAA Participants can be found under the section on OAA Performance Information on ACL’s

website at: <https://acl.gov/programs/performance-older-americans-act-programs>. Copies of the survey instruments and data from previous National Surveys of OAA Participants can be found and queried using the

Aging, Independence, and Disability (AGID) Program Data Portal at <http://www.agid.acl.gov/>.

*Estimated Program Burden:* ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours	Cost per hour	Annual burden (cost)
Rotating Module on Emergency Preparedness .....	6,000	1	.2	1,200	\$25	\$30,000

Dated: March 25, 2022.

**Alison Barkoff,**

*Acting Administrator and Assistant Secretary for Aging.*

[FR Doc. 2022-06783 Filed 3-30-22; 8:45 am]

**BILLING CODE 4154-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

[Docket No. USCG-2022-0047]

**Port Access Route Study: Approaches to Maine, New Hampshire, and Massachusetts**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of study; request for comments.

**SUMMARY:** The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to Maine, New Hampshire, Massachusetts, and international and domestic transit areas in the First Coast Guard District area of responsibility (AOR). The Approaches to Maine, New Hampshire, and Massachusetts PARS (MNMPARS) will consider whether existing or additional routing measures are necessary to improve navigation safety due to factors such as planned or potential offshore development, current port capabilities and planned improvements, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. Vessel routing measures, which include traffic separation schemes, two-way routes, recommended tracks, deep-water routes, precautionary areas, and areas to be avoided, are implemented to reduce risk of marine casualties. The

recommendations of the study may subsequently be implemented through rulemakings or in accordance with international agreements.

**DATES:** All comments and related material must be received on or before May 16, 2022. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight, Eastern Daylight Time, on the last day of the comment period.

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0047 using the Federal eRulemaking Portal (<http://www.regulations.gov>). See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of study, call or email LTJG Thomas Davis, First Coast Guard District (dpw), U.S. Coast Guard; telephone (617) 223-8632, email [SMB-D1Boston-MNMPARS@uscg.mil](mailto:SMB-D1Boston-MNMPARS@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

- ACPARS Atlantic Coast Port Access Route Study
- AIS Automatic Identification System
- COMDTINST Commandant Instruction
- DHS Department of Homeland Security
- EEZ Exclusive Economic Zone
- MNMPARS Approaches to Maine, New Hampshire, and Massachusetts Port Access Route Study
- MTS Marine Transportation System
- PARS Port Access Route Study
- TSS Traffic Separation Scheme
- USCG United States Coast Guard

**II. Background and Purpose**

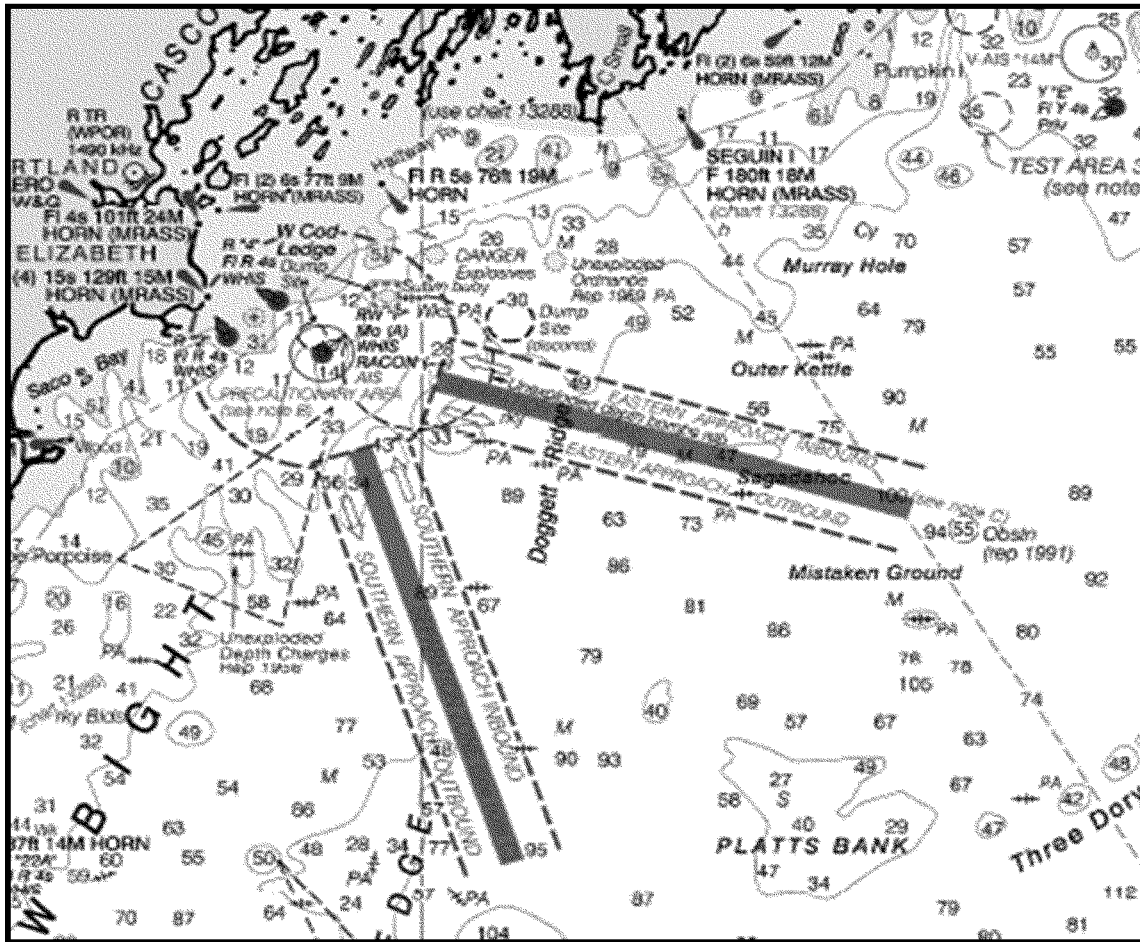
*A. Requirements for Port Access Route Studies:* Under Section 70003 of

Title 46 of the United States Code, the Commandant of the U.S. Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

Before establishing or adjusting fairways or TSSs, the Coast Guard must conduct a PARS, *i.e.*, a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard must coordinate with federal, state, tribal, and foreign state agencies (where appropriate) and consider the views of maritime community representatives, environmental groups, and other stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as anchorages, construction, operation of renewable energy facilities, marine sanctuary operations, commercial and recreational activities, and other uses.

In addition to aiding in the establishment of new or adjusting existing fairways or TSSs, this PARS may recommend establishing or amending other vessel routing measures. Examples of other routing measures include two-way routes, recommended tracks, deep-water routes (for the benefit primarily of ships whose ability to maneuver is constrained by their draft), precautionary areas (where ships must navigate with particular caution), and areas to be avoided (for reasons of exceptional danger or especially sensitive ecological environmental factors).

**BILLING CODE 9110-04-P**



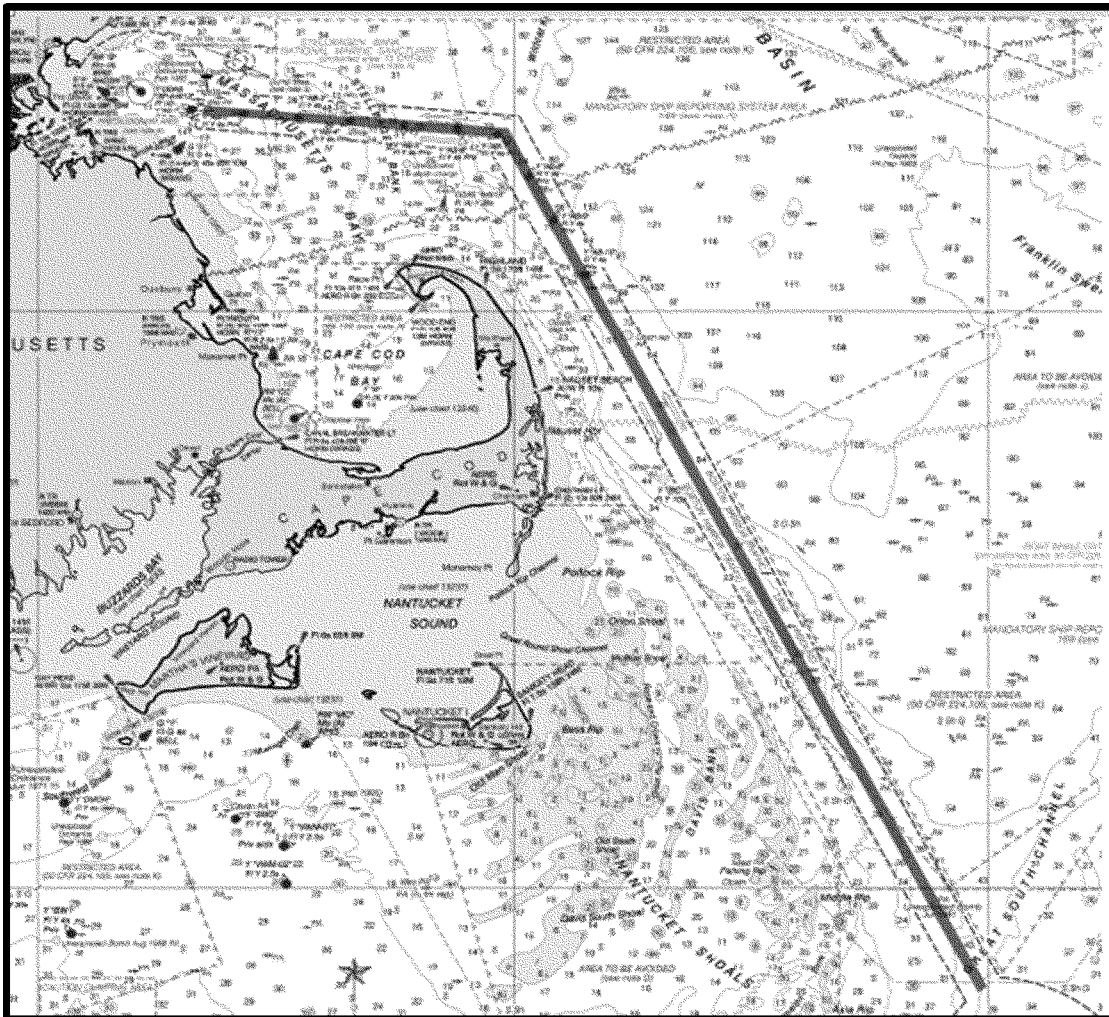
Charted vessel routing measures approaches to Portland, ME.

B. *Previous Port Access Route Studies within this Study Area:* The Coast Guard established the TSS in the approaches to Portland, ME, in 1978. In 2005, the Coast Guard published a notice of study in the **Federal Register** (70 FR 7067; February 10, 2005) announcing a PARS to Evaluate the Vessel Routing Measures in the Approaches to Portland, ME, and Casco Bay, ME. The PARS was

completed in 2006 and concluded that no amendment to the TSS was needed.

The TSS in the approach to Boston, MA was established in 1973 and was amended in 1983, 2007, and 2009. In 2005, the Coast Guard announced in the **Federal Register** (70 FR 8312; February 18, 2005) a PARS of Potential Vessel Routing Measures to Reduce Vessel Strikes of North Atlantic Right Whales.

The completed PARS was published in the **Federal Register** (71 FR 29876; May 24, 2006) and recommended realigning and amending the location and size of the western portion of the TSS in the approach to Boston, MA. The TSS was revised in 2007 and the new configuration appeared on nautical charts soon thereafter.



Charted vessel routing measures approaches to Boston, MA.

**BILLING CODE 9110-04-C**

In 2016, the Coast Guard published a notice of its Atlantic Coast Port Access Route Study (ACPARS) in the **Federal Register** (81 FR 13307; March 14, 2016) and announced the study report as final in the **Federal Register** (82 FR 16510; April 5, 2017). The ACPARS analyzed the Atlantic Coast waters seaward of existing port approaches within the U.S. Exclusive Economic Zone (EEZ). Information provided by stakeholders and Automatic Identification System (AIS) vessel traffic data was used to identify and verify deep draft and coastwise navigation routes typically followed by ships engaged in commerce between international and domestic U.S. ports.

*C. Need for a New Port Access Route Study:* In 2019, the Coast Guard announced a new study of routes used by ships to access ports on the Atlantic Coast of the United States in the **Federal Register** (84 FR 9541; March 15, 2019). This study supplemented and built upon the ACPARS by conducting a

series of PARSs to examine ports along the Atlantic Coast that are economically significant, that support military or critical national defense operations, and any related international entry and departure transit areas that are integral to the safe, efficient, and unimpeded flow of commerce to/from major international shipping lanes. The MNMPARS will be conducted in support of the ACPARS initiative.

**III. Information Requested**

The study area encompasses a very large region (20,500 square nautical miles), bounded by the states of Maine, New Hampshire, and Massachusetts, and the Canadian provinces of Nova Scotia and New Brunswick. The purpose of this notice is to announce commencement of this PARS to examine the First Coast Guard District's portion of the Gulf of Maine, the New Hampshire Seacoast, and the Massachusetts Bay, and to solicit public comments. We encourage you to participate in the study process by

submitting comments in response to this notice. Comments should address impacts to navigation in the area of study resulting from factors such as offshore development, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty.

**IV. Public Participation and Request for Comments**

We encourage you to participate in this study by submitting comments and related materials.

*A. Submitting Comments:* To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG-2022-0047" in the "search box." Click "Search". Then click "Comment." The "Comment" button can be found on the following pages:

- Docket Details page when a document within the docket is open for comment,
- Document Details page when the document is open for comment, and



- Document Search Tab with all search results open for comment displaying a “Comment” button.

Clicking “Comment” on any of the above pages will display the comment form. You can enter your comment on the form, attach files (maximum of 20 files up to 10MB each), and choose whether to identify yourself as an individual, an organization, or anonymously. Be sure to complete all required fields depending on which identity you have chosen. Once you have completed all required fields and chosen an identity, the “Submit Comment” button is enabled. Upon completion, you will receive a Comment Tracking Number for your comment. For additional step by step instructions, please see the Frequently Asked Questions page on <http://www.regulations.gov> or by clicking <https://www.regulations.gov/faq>.

We accept anonymous comments. Comments we post to <http://www.regulations.gov> will include any personal information you have provided.

We review all comments and materials received during the comment period, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*B. How do I find and browse for posted comments on Regulations.gov.* On the previous version of *Regulations.gov*, users browsed for

comments on the Docket Details page. However, since comments are made on individual documents, not dockets, new *Regulations.gov* organizes comments under their corresponding document. To access comments and documents submitted to this draft version of the study report go to <http://www.regulations.gov>, and insert “USCG–2022–0047” in the “search box.” Click “Search.” Then scroll down to and click on the “notice” entitled “Port Access Route Study: Notice of availability of draft report and public information session; request for comments.” This will open to the “Document Details” page. Then click on the “Browse Comments” tab. On the comment tab, you can search and filter comments. Note: If no comments have been posted to a document, the “Comments” tab will not appear on the Document Details page.

*C. If you need additional help navigating the new Regulations.gov.* For additional step by step instructions to submit a comment or to view submitted comments or other documents please see the Frequently Asked Questions (FAQs) at <http://www.regulations.gov/faq> or call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*D. Privacy Act:* Anyone can search the electronic form of comments received

into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding DHS’s eRulemaking in the March 11, 2020 issue of the **Federal Register** (85 FR 14226).

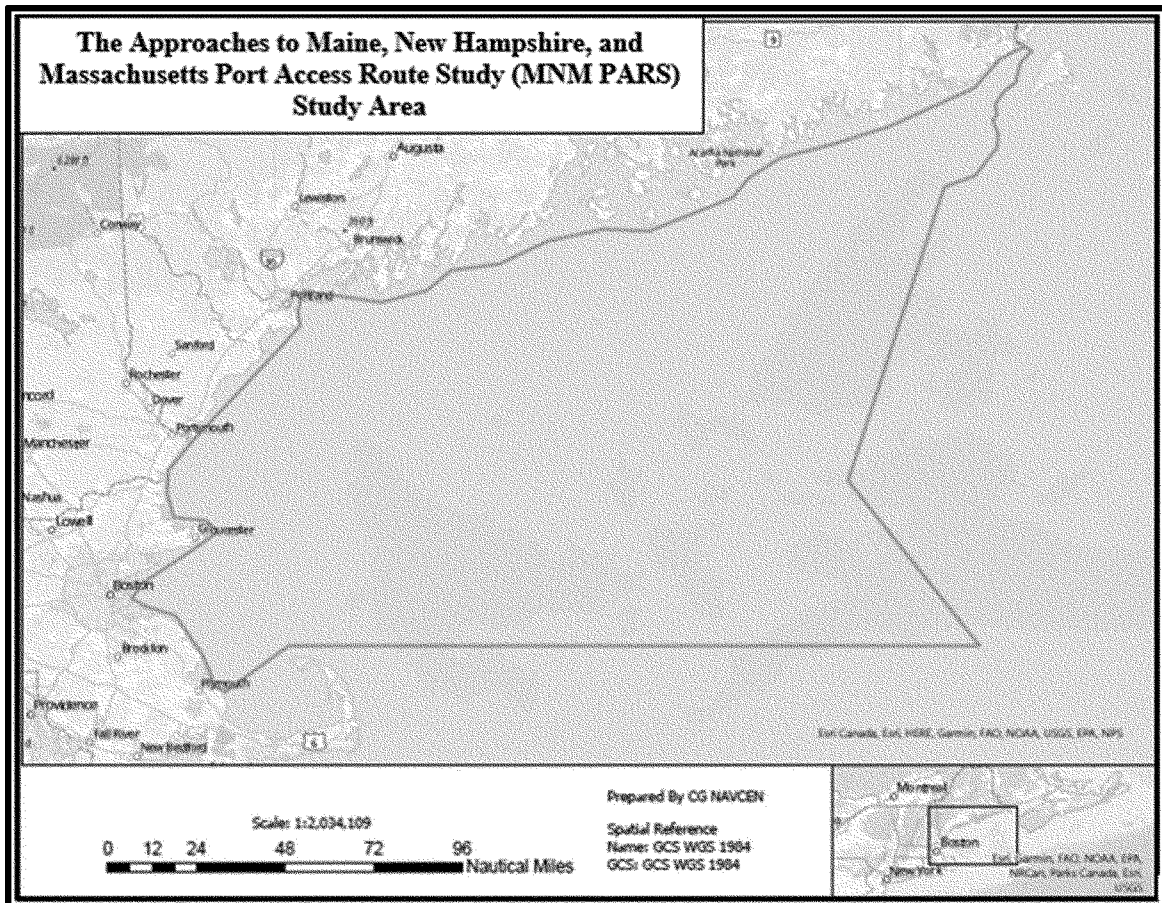
#### **V. MNMPARS: Timeline, Study Area, and Process**

The First Coast Guard District will conduct this PARS. The study will commence upon publication of this notice and may take 12 months or more to complete.

The study area will include the Gulf of Maine, the New Hampshire Seacoast, and Massachusetts Bay regions within the First Coast Guard District AOR encompassed by a line connecting the following geographic positions:

- 41°55′ N 70°33′ W
- 42°08′ N 70°15′ W
- 42°08′ N 67°08′17″ W

then proceeding north along the outermost extent of the EEZ and U.S./ Canadian border and thence along the coast line back to the origin. This area extends approximately 175 nautical miles seaward and covers approximately 20,500 square nautical miles. An illustration showing the study area is below.



Chartlet showing the MNMPARS Study Area.

Analyses will be conducted in accordance with COMDTINST 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy. Instruction is available at [https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI\\_16003\\_2B.PDF](https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI_16003_2B.PDF).

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to address navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

## VI. Future Actions

*In Person Public Meetings:* Although the Coast Guard prefers and highly encourages all comments and related material be submitted directly to the electronic docket we do understand the value that in person public meetings will add to the study. Therefore, the Coast Guard intends to hold public meetings at various locations

throughout the study area as the 2022 study process continues. For this initial comment period we ask that you make your comments directly to the docket, addressing impacts to navigation in the area of study resulting from factors such as offshore development, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. We anticipate that these early comments will inform us as to prevalent concerns and how best to use our limited resources when scheduling meeting locations.

Future public meetings will be announced by a notice in the **Federal Register**.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: March 22, 2022.

**T.G. Allan Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.*

[FR Doc. 2022-06818 Filed 3-30-22; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2022-0002]

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

**DATES:** Each LOMR was finalized as in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed

since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community

must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Mobile (FEMA Docket No.: B-2182).	Unincorporated areas of Mobile County (21-04-4141P).	The Honorable Merceria L. Ludgood, President, Mobile County Commission, 205 Government Street, 10th Floor, South Tower, Mobile, AL 36644.	Mobile County Government Plaza, 205 Government Street, 6th Floor, South Tower, Mobile, AL 36644.	Feb. 22, 2022 ....	015008
Colorado:					
Denver (FEMA Docket No.: B-2182).	City and County of Denver (21-08-0108P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Mar. 4, 2022 .....	080046
El Paso (FEMA Docket No.: B-2188).	Unincorporated areas of El Paso County (21-08-0534P).	The Honorable Stan VanderWerf, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Feb. 22, 2022 ....	080059
Florida:					
Collier (FEMA Docket No.: B-2182).	City of Marco Island (21-04-4961P).	Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Mar. 1, 2022 .....	120426
Monroe (FEMA Docket No.: B-2182).	Village of Islamorada (21-04-4874P).	The Honorable Buddy Pinder, Mayor, Village of Islamorada, 8680 Overseas Highway, Islamorada, FL 33036.	Building Department, 8680 Overseas Highway, Islamorada, FL 33036.	Feb. 22, 2022 ....	120424
Mississippi: DeSoto (FEMA Docket No.: B-2203).	Unincorporated areas of DeSoto County (20-04-2263P).	Ms. Vanessa Lynchard, DeSoto County Administrator, 365 Loshier Street, Suite 300, Hernando, MS 38632.	DeSoto County Planning Department, 365 Loshier Street, Suite 200, Hernando, MS 38632.	Feb. 25, 2022 ....	280050
North Carolina:					
Johnston (FEMA Docket No.: B-2214).	Unincorporated areas of Johnston County (20-04-5908P).	The Honorable Chad Stewart, Chairman, Johnston County Board of Commissioners, P.O. Box 1049, Smithfield, NC 27577.	Johnston County Planning Department, 309 East Market Street, Clayton, NC 27520.	Feb. 17, 2022 ....	370138
Orange (FEMA Docket No.: B-2214).	Unincorporated areas of Orange County (21-04-0006P).	The Honorable Renee Price, Chair, Orange County Board of Commissioners, P.O. Box 1303, Hillsborough, NC 27278.	Orange County Planning Department, 131 West Margaret Lane, Hillsborough, NC 27278.	Feb. 10, 2022 ....	370342
Pender (FEMA Docket No.: B-2214).	Town of Burgaw (20-04-3993P).	The Honorable Kenneth Cowan, Mayor, Town of Burgaw, 109 North Walker Street, Burgaw, NC 28425.	City Hall, 109 North Walker Street, Burgaw, NC 28425.	Feb. 11, 2022 ....	370483
Union (FEMA Docket No.: B-2214).	Unincorporated areas of Union County (21-04-0276P).	The Honorable Richard Helms, Chairman, Union County Board of Commissioners, 500 North Main Street, Suite 918, Monroe, NC 28112.	Union County Planning Department, 500 North Main Street, Suite 70, Monroe, NC 28112.	Feb. 18, 2022 ....	370234
South Carolina: Aiken (FEMA Docket No.: B-2188).	City of Aiken (21-04-3558P).	Mr. Stuart Bedenbaugh, Administrator, City of Aiken, 214 Park Avenue Southwest, Aiken, SC 29801.	Geographic Information Systems (GIS) Department, 245 Dupont Drive, Aiken, SC 29801.	Mar. 7, 2022 .....	450003
Texas:					
Brazos (FEMA Docket No.: B-2182).	City of Bryan (21-06-1877P).	The Honorable Andrew Nelson, Mayor, City of Bryan, P.O. Box 1000, Bryan, TX 77805.	City Hall, 300 South Texas Avenue, Bryan, TX 77803.	Feb. 22, 2022 ....	480082

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Collin (FEMA Docket No.: B-2178).	City of Lavon, (21-06-1485P).	The Honorable Vicki Sanson, Mayor, City of Lavon, P.O. Box 340, Lavon, TX 75166.	City Hall, 120 School Road, Lavon, TX 75166.	Feb. 22, 2022 ....	481313
Collin (FEMA Docket No.: B-2182).	City of McKinney (21-06-1540P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	Mar. 7, 2022 .....	480135
Ellis (FEMA Docket No.: B-2182).	City of Pecan Hill (21-06-0676P).	The Honorable Don Schmerse, Mayor, City of Pecan Hill, 1094 South Lawrance Road, Pecan Hill, TX 75154.	City Hall, 1094 South Lawrance Road, Pecan Hill, TX 75154.	Feb. 25, 2022 ....	481673
Ellis (FEMA Docket No.: B-2182).	City of Red Oak (21-06-0676P).	Mr. Todd Fuller, Manager, City of Red Oak, 200 Lakeview Parkway, Red Oak, TX 75154.	Development Services Department, 411 West Red Oak Road, Red Oak, TX 75154.	Feb. 25, 2022 ....	481650
Ellis (FEMA Docket No.: B-2182).	Unincorporated areas of Ellis County (21-06-0676P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	Feb. 25, 2022 ....	480798
Harris (FEMA Docket No.: B-2203).	Unincorporated areas of Harris County (21-06-0376P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Mar. 7, 2022 .....	480287
Montgomery (FEMA Docket No.: B-2188).	City of Conroe (21-06-1521P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	City Hall, 700 Metcalf Street, Conroe, TX 77301.	Mar. 7, 2022 .....	480484
Rockwall (FEMA Docket No.: B-2188).	City of Royse City (21-06-0684P).	The Honorable Clay Ellis, Mayor Pro Term, City of Royse City, P.O. Box 638, Royse City, TX 75189.	Engineering Department, 305 North Arch Street, Royse City, TX 75189.	Mar. 4, 2022 .....	480548
Utah: Summit (FEMA Docket No.: B-2182).	City of Park City (21-08-0593P).	The Honorable Andy Beerman, Mayor, City of Park City, 445 Marsac Avenue, Park City, UT 84060.	City Hall, 445 Marsac Avenue, Park City, UT 84060.	Feb. 28, 2022 ....	490139

[FR Doc. 2022-06843 Filed 3-30-22; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

[Docket Number—DHS-2021-0050]

### Agency Information Collection Activities: Family Reunification Task Force Travel Questionnaire and Website Application

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** 30-Day notice and request for comments; Family Reunification Task Force Travel Questionnaire and Website Application, extension without change.

**SUMMARY:** The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on Tuesday, November 16, 2021, for a 60-day public comment period. No comment was received by DHS. The purpose of this notice is to allow additional 30 days for public comments. **DATES:** Comments are encouraged and will be accepted until May 2, 2022. This process is conducted in accordance with 5 CFR 1320.1.

**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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**SUPPLEMENTARY INFORMATION:** On February 2, 2021, President Biden signed Executive Order 14011 (E.O. 14011), Establishment of Interagency Task Force on the Reunification of Families, in response to the prior Administration decision to intentionally separate children from their parents and legal guardians (families), including through the use of the Zero-Tolerance Policy. E.O. 14011 directs the Interagency Task Force on the Reunification of Families (Task Force) to identify children who were separated and facilitate and enable the reunification of the families. Additionally, E.O. 14011 directs the Task Force to provide recommendations on providing additional services and support for the reunified families, including behavioral health services with a focus on trauma-informed care. The Secretary of Homeland Security is the chair of the Task Force and is joined by the Department of State, Department of Health and Human Services, and the Department of Justice.

To carry out the Task Force’s mission to reunify families, DHS is extending the current information data collection. The purpose is to achieve efficiencies to process these individuals for a successful family reunification. To streamline the initial contact, assistance, and reunification travel coordination process, the Task Force has created a

website application (Register | [together.gov](http://together.gov) and Regístrese | [together.gov](http://together.gov) ([juntos.gov](http://juntos.gov))) to create initial contact and a travel form to collect details and information the Task Force needs to make travel arrangements for the beneficiary and other traveling family members.

The information to be collected on the website application would include:

- A-Number
- Name of Separated Parent
- Contact Information of the Separated Parent (phone, email)
- Country of Birth
- Country of Citizenship
- Current Country Location
- Separated Parent Relationship to Child
- Separated Parent’s Preferred Language
- Separated Child’s A#
- Separated Child Name
- Separated Child’s Date of Birth
- Separated Child’s Country of Birth
- Separated Child’s Country of Citizenship
- Whether Separated Parent is in contact with Child
- Whether Separated Parent has knowledge of Child’s current location
- Name of Attorney, Advocate or Preparer
- Attorney, Advocate, or Preparer Contact Information

The information to be collected for travel would include: Name, Date of Birth, Gender, A#, Passport Number and Expiration, Phone Number, Email address, Language(s) spoken, Representative/Attorney name and contact information, Date of Embassy Appointment to obtain boarding foil,

Identification of Special Assistance Requests, Departure Airport, Final Airport, Traveling requested time frame, Names of others in the traveling party. The data will be stored by the international organization coordinating travel for the families.

This information collection does not have an impact on small businesses or other small entities.

If this information is not collected, the Task Force will not be able to accomplish its mission to reunite families swiftly.

The assurance of confidentiality provided to the respondents for this information collection is based on the Privacy Impact Assessment DHS/ALL/PIA-091. The Systems of Records Notices that will be included in this ICR include DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556 DHS/USCIS-007 Benefits Information System, October 10, 2019, 84 FR 54622.

This information collection was constructed in compliance with regulations and authorities under the purview of the DHS Privacy Office, DHS Office of the Chief Information Officer (OCIO), DHS Records Management, and OMB regulations regarding data collection, use, sharing, storage, information security, and retrieval of information.

There are no changes to the information being collected and there is no change to the estimated burden associated with this collection.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## Analysis

*Agency:* Department of Homeland Security (DHS).

*Title:* Family Reunification Task Force Travel Questionnaire and Website Application.

*OMB Number:* 1601-0031.

*Frequency:* Annually.

*Affected Public:* Members of the Public.

*Number of Respondents:* 3,000.

*Estimated Time per Respondent:* 20 minutes.

*Total Burden Hours:* 1,000.

## Robert Dorr,

*Executive Director, Business Management Directorate.*

[FR Doc. 2022-06491 Filed 3-30-22; 8:45 am]

**BILLING CODE 9112-FL-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR-6289-N-02]

### Notice of Intent To Establish a Tribal Intergovernmental Advisory Committee; Structure and Request for Nominations

**AGENCY:** Office of Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

**ACTION:** Notice.

**SUMMARY:** This notice seeks nominations for HUD's Tribal Intergovernmental Advisory Committee (TIAC). It provides details on who is eligible to serve on TIAC and how Tribal governments can nominate persons to serve on TIAC on their behalf. Additionally, this notice announces the structure of the TIAC, informed by Tribal feedback.

**DATES:** Nominations for potential representatives of the TIAC are due on or before: May 31, 2022.

**ADDRESSES:** Interested persons are invited to submit nominations for potential representatives of the TIAC. Nominations may be submitted to HUD electronically. All submissions must refer to the above docket number and title.

*Electronic Submission of Nominations.* Interested persons may submit nominations electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Electronic submission allows the maximum time to prepare and submit nominations, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Nominations submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be

viewed by interested members of the public. Individuals should follow the instructions provided on that website to submit nominations.

**Note:** To receive consideration, nominations must be submitted electronically through [www.regulations.gov](http://www.regulations.gov) and refer to the above docket number and title. Nominations should not be submitted by mail.

*No Facsimile Comments.* Facsimile (FAX) comments will not be accepted.

*Public Inspection of Nominations.* All properly submitted nominations and communications submitted to HUD will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the HUD Headquarters building located at 451 7th Street SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the submissions must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. Copies of all submissions are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4108, Washington, DC 20410-0500, telephone (202) 401-7914 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Consistent with Executive Order 13175,<sup>1</sup> HUD's Tribal Government-to-Government Consultation Policy recognizes the right of Indian tribes to self-governance and supports Tribal sovereignty and self-determination.<sup>2</sup> It provides that HUD will engage in regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications. Executive Order 13175 also requires Federal agencies to advance Tribal self-governance and ensure that the rights of sovereign Tribal governments are fully

<sup>1</sup> Executive Order 13175, 65 FR 67249 (November 9, 2000).

<sup>2</sup> Tribal Government-to-Government Consultation Policy, 81 FR 40893 (June 23, 2016).

respected by conducting open and candid consultations.

In 2016, in furtherance of Executive Order 13175, HUD proposed the establishment of a TIAC. On June 23, 2016, HUD published a **Federal Register** Notice seeking comments on the structure of the proposed TIAC.<sup>3</sup> On December 21, 2016, HUD published a second **Federal Register** Notice announcing the establishment of the TIAC and requesting nominations from duly elected or appointed Tribal leaders to serve on the TIAC.<sup>4</sup> HUD received nominations from various Tribes but did not receive an adequate number of nominations to fully constitute the TIAC. Accordingly, HUD did not complete the establishment of the TIAC at that time.

On January 26, 2021, President Biden issued a Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.<sup>5</sup> The memorandum directed all Federal agencies to take actions to strengthen their Tribal consultation policies and practices and to further the purposes of Executive Order 13175.

To further enhance consultation and collaboration with Tribal governments, HUD is once again proposing to establish the TIAC. Several Federal agencies have established similar Tribal advisory committees. These advisory committees convene periodically during the year to exchange information with agency staff, notify Tribal leaders of activities or policies that could affect Tribes, and provide guidance on consultation. HUD has determined that a similar advisory committee would provide critical support to the Department as it formulates policies having a direct impact on Tribes/ Tribally Designated Housing Entities (TDHEs). The formation of the TIAC would also assist the Department in carrying out its responsibilities under the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.

On November 15, 2021, HUD published a notice in the **Federal Register** soliciting Tribal feedback on a proposed TIAC. HUD proposed how the TIAC would be structured and how it would function. HUD received written comments from 12 different commenters

submitted via *regulations.gov*. The commenters included Tribes, Tribal leaders, Tribal housing employees, Tribal housing authorities, regional housing authorities, and Tribal individuals, and represented many different perspectives. Overall, commenters were supportive of establishing the TIAC. Commenters submitted feedback with respect to many topics, including:

- Number of Tribal representatives on the committee;
- Eligibility criteria for Tribal representatives;
- Ensuring that the TIAC does not supplant negotiated rulemaking committees in the future or negatively impact other Tribal consultation practices;
- Length of a representative's tenure;
- Experience with housing;
- What source of funding would be used to support TIAC.

HUD reviewed all comments and took them into consideration when establishing the structure of the TIAC. HUD thanks all commenters for their thoughtful feedback.

This notice announces the structure of the TIAC (informed by Tribal feedback) and solicits nominations for Tribal representatives of the committee.

## II. Nominations for TIAC Representation

HUD is requesting nominations for Tribal representatives to serve on the TIAC. Nominations are due on or before: May 31, 2022. If you are interested in serving as a representative of the Committee or in nominating another person to serve as a representative of the Committee, you may submit a nomination to HUD in accordance with the Electronic Submission of Nominations section of this notice. Your nomination for representation on the Committee must include:

1. The name of the nominee, a description of the interests the nominee would represent, and a description of the nominee's experience and interest in American Indian and Alaska Native housing and community development matters;
2. Evidence that the nominee is a duly elected or appointed Tribal leader and is authorized to represent a federally recognized tribal government or Alaska Native Corporation;
3. A written commitment from the nominee that she or he will actively engage and participate in the Committee meetings; and
4. A written preference for serving either a two- or a three-year term on the TIAC. HUD will appoint the representatives of the TIAC from the

pool of nominees submitted in response to this notice. HUD will announce the final selections for TIAC representatives in a subsequent **Federal Register** notice. Representatives will be selected based on proven experience and interest in American Indian and Alaska Native (AIAN) housing and community development matters and whether the interest of the proposed representative could be represented adequately by other representatives. In addition to the criteria above, at-large representatives will be selected based on their ability to represent specific interests that might not be represented by the selected regional representatives.

Generally, only elected officers of a tribal government acting in their official capacities with authority to act on behalf of the tribal government may serve as TIAC representatives or alternates of the TIAC.

Tribal employees are also eligible to serve if appointed by a duly elected tribal leader of a federally recognized tribe and are authorized to officially act on the Tribal government's behalf.

Elected officials representing Alaska Native Corporations, or designated employees, may also serve on TIAC at HUD's discretion provided they demonstrate that they meet the criteria specified in the statutory exemption to the Federal Advisory Committee Act (FACA) found in the Unfunded Mandates Reform Act (UMRA) at 2 U.S.C. 1534(b).

Because the TIAC will operate under the Tribal government statutory exemption to the Federal Advisory Committee Act (FACA) found in the Unfunded Mandates Reform Act (UMRA) at 2 U.S.C. 1534(b), HUD will not consider nominees solely representing Tribally Designated Housing Entities, state recognized Tribes, or national or regional organizations. However, HUD will consider nominations from associations that represent elected officials of Tribes who have been designated by an elected Tribal leader to participate in TIAC.

## III. Structure of the TIAC

### A. Purpose and Role of the TIAC

The purposes of the TIAC are:

- (1) To further facilitate intergovernmental communication between HUD and Tribal leaders of federally recognized Tribes on all HUD programs;
- (2) To make recommendations to HUD regarding current program regulations that may require revision, as well as suggest rulemaking methods to develop such changes. The TIAC will not, however, negotiate any changes to

<sup>3</sup> Notice of Proposal to Establish a Tribal Intergovernmental Advisory Committee; Request for Comments on Committee Structure, 81 FR 40899 (June 23, 2016).

<sup>4</sup> Establishment of Tribal Intergovernmental Advisory Committee; Request for Nominations for Tribal Intergovernmental Membership, 81 FR 93700 (December 21, 2016).

<sup>5</sup> The memorandum was published in the **Federal Register** on January 29, 2021 (86 FR 7491).

regulations that are subject to negotiated rulemaking under Section 106 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and will not serve in place of any future negotiated rulemaking committee established by HUD; and

(3) To advise in the development of HUD's AIAN housing priorities.

The role of the TIAC is to provide recommendations and input to HUD, and to provide a vehicle for regular, meaningful consultation and collaboration with Tribal officials. It will not replace other means of Tribal consultations, but, rather, will supplement them. HUD will maintain the responsibility to exercise program management, including the drafting of HUD notices, guidance documents, and regulations.

#### B. Charter and Protocols

The TIAC will develop its own ruling charter and protocols. HUD will provide staff support to the TIAC to act as a liaison between TIAC and HUD officials, manage meeting logistics, and provide general support for TIAC activities.

#### C. Meetings and Participation

Subject to availability of Federal funding, the TIAC will meet periodically to discuss agency policies and activities with HUD, set shared priorities, and facilitate further consultation with Tribal representatives. Initially, meetings will likely be conducted virtually, but may be in person in the future, and will be conducted consistent with any COVID-19 safety protocols. HUD will pay for these meetings, including the representative's cost to travel to these meetings. The TIAC may also agree to meet virtually outside of formal meetings, via conference calls, videoconferences, or through other forms of communication. Additional in-person meetings may be scheduled at HUD's discretion in the future. Participation at TIAC meetings will be limited to TIAC representatives or their alternates. Alternates must be designated in writing by the representative's Tribal government to officially act on their behalf. TIAC representatives may bring one technical advisor to the meeting at their expense. The technical advisor can advise the representative but cannot speak in the representative's place. Meeting summaries may be available on the HUD website.

#### D. TIAC Representation

The TIAC will be comprised of HUD representatives and Tribal

representatives from across the country, representing small, medium, and large tribes. The TIAC will be composed of HUD officials (including the Secretary or his or her designee, as well as the Assistant Secretaries for Office of Public and Indian Housing (PIH), Office of Policy, Development, and Research (PD&R), Office of Fair Housing and Equal Opportunity (FHEO), Office of Field Policy Management (FPM), Office of Housing (FHA), Government National Mortgage Association (Ginnie Mae), and Office of Community Planning and Development (CPD) or their designees) and up to fifteen Tribal representatives. Up to two Tribal representatives will represent each of the six HUD ONAP regions. Up to three remaining Tribal representatives will serve at-large. Generally, only elected officers of a tribal government acting in their official capacities or designated employees of tribal governments with authority to act on behalf of the tribal government may serve as TIAC representatives or alternates of the TIAC. Elected officials representing Alaska Native Corporations, or designated employees, may also serve on TIAC at HUD's discretion provided they demonstrate that they meet the criteria specified in the statutory exemption to the Federal Advisory Committee Act (FACA) found in the Unfunded Mandates Reform Act (UMRA) at 2 U.S.C. 1534(b). The Secretary of HUD will appoint the HUD representatives of the TIAC. TIAC Tribal representatives will serve a term of two years. To ensure consistency between Tribal terms, representatives will have a staggered term of appointment. In order to establish a staggered term of appointment, half of the Tribal representatives appointed in the inaugural year of the TIAC will serve two years and the other half will serve three years. Tribal representatives must designate their preference to serve two or three years; however, HUD will make the final determination on which Tribal representatives will serve two or three years. Once these Tribal representatives complete these initial terms, future Tribal representatives will serve terms that last two years. Should a representative's tenure as a Tribal leader come to an end during their appointment to the TIAC, the representative's Tribe will nominate a replacement, if not the already nominated alternate.

#### E. Function

The establishment of the TIAC is intended to enhance government-to-government relationships, communications, and mutual cooperation between HUD and Tribes. It

is not intended to, and will not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other persons.

**Dominique Blom,**

*General Deputy Assistant, Secretary for Public and Indian Housing.*

[FR Doc. 2022-06775 Filed 3-30-22; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX21NB00TKY9000; OMB Control Number 1028-NEW]

#### Agency Information Collection Activities; Hunter Harvest and Satisfaction Surveys on Green Bay and Lake Michigan

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, we, the U.S. Geological Survey (USGS) are proposing approval of an existing collection in use without an OMB Control Number.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Dionne Duncan-Hughes, U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028-NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Luke Fara by email at [lfara@usgs.gov](mailto:lfara@usgs.gov) or by telephone at (608) 781-6233. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork

Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor, nor are you required to respond to a collection of information, unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not this collection of information is necessary for the proper performance of the functions of the agency, including whether or not this information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

**Abstract:** This collection seeks to gather information on harvest and satisfaction from waterfowl hunters on the open waters of Green Bay and Lake Michigan. From 2021 through 2025, the Wisconsin waterfowl hunting season will have a North, South, and a new area called the Open Water Zone. The Open Water Zone will be specific to the offshore, open waters of Lake Michigan and Green Bay. Specific regulations for this new zone, which starts 500 feet

offshore and extends to the Wisconsin-Michigan state boundary, can be modified during the five-year period and input from hunters will provide critical information to improve hunter satisfaction. The existing survey used to gather information on the season frameworks preferred by hunters under the 2016–2020 season structure cannot be applied to the Open Water Zone; thus, USGS plans to conduct both in-person and online surveys targeted toward open water hunters to gather their input on season frameworks. Surveys will also be used to inform managers on what, where, and how many species of waterfowl are harvested in this open water environment. Wisconsin waterfowl managers will use information collected from this survey to assist in developing season frameworks within this new zone and provide information on harvest composition.

**Title of Collection:** Hunter Harvest and Satisfaction Surveys on Green Bay and Lake Michigan.

**OMB Control Number:** 1028–NEW.

**Form Number:** None.

**Type of Review:** An existing collection without an OMB number.

**Respondents/Affected Public:** Waterfowl hunters that hunt the open waters of Green Bay and Lake Michigan.

**Total Estimated Number of Annual Respondents:** 200.

**Total Estimated Number of Annual Responses:** 600.

**Estimated Completion Time per Response:** 10 minutes on average.

**Total Estimated Number of Annual Burden Hours:** 100.

**Respondents' Obligation:** Voluntary.

**Frequency of Collection:** Occur each time they hunt the open waters of Green Bay and/or Lake Michigan.

**Total Estimated Annual Nonhour Burden Cost:** None.

An agency may not conduct, or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Luke Fara,**

*Biologist.*

[FR Doc. 2022–06777 Filed 3–30–22; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX.22.GG00.99600.00; OMB Control Number 1028–0051]

#### Agency Information Collection Activities; Earthquake Hazards Program Research and Monitoring

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–0051 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jill Franks, Earthquake Hazards Program, U.S. Geological Survey, by email at [jfranks@usgs.gov](mailto:jfranks@usgs.gov), or by telephone at 703–648–6716. 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 above point of contact in the United States.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and



provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

**Abstract:** Research and monitoring findings are essential to fulfilling the USGS's responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and to record earthquake activity nationwide. Residents, emergency responders, engineers, and the general public rely on the USGS for this accurate and scientifically sound information. The USGS Earthquake Hazards Program funds external investigators to carry out these important activities. In response to our Program Announcements, investigators submit proposals for research and monitoring activities on earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS's Earthquake Hazards Program objectives. Final Reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards that are two- to five years in duration. Final Reports are made available to the general public at the

website <https://www.usgs.gov/programs/earthquake-hazards/external-grants>.

**Title of Collection:** Earthquake Hazards Program Research and Monitoring.

**OMB Control Number:** 1028–0051.

**Form Number:** None.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Research scientists, engineers, and the general public.

**Total Estimated Number of Annual Respondents:** 370.

**Total Estimated Number of Annual Responses:** 370.

**Estimated Completion Time per Response:** 54 (45 hours per proposal application response and 9 hours per final or annual progress report).

**Total Estimated Number of Annual Burden Hours:** 19,980.

**Respondent's Obligation:**

Participation is voluntary but necessary to receive funding.

**Frequency of Collection:** Annually.

**Total Estimated Annual Nonhour**

**Burden Cost:** There are no non-hour cost burdens associated with this Information Collection.

An agency may not conduct or sponsor, nor is a person is required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Jill Franks,**

*Associate Program Coordinator, Earthquake Hazards External Research.*

[FR Doc. 2022–06778 Filed 3–30–22; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[Docket No. DOI–2022–0003; 223D0102DM, DS6CS00000, DLSN00000.000000, DX.6CS25]

### Request for Information To Inform Interagency Working Group on Mining Regulations, Laws, and Permitting

**AGENCY:** Office of the Secretary, Department of the Interior.

**ACTION:** Request for information.

**SUMMARY:** The Department of the Interior is announcing the formation of an interagency working group to gather information and develop recommendations for improving Federal hardrock mining regulations, laws, and permitting processes, and is inviting public comments to help inform the

efforts of the working group. Virtual or in-person public listening sessions will be announced in the upcoming months.

**DATES:** Interested persons are invited to submit comments by 11:59 p.m. on July 31, 2022. When public listening sessions are scheduled, the dates will be published in the **Federal Register**.

**ADDRESSES:** Comments may be submitted through <https://www.regulations.gov> and will be available for public viewing and inspection. In the Search box, enter the docket number presented above in the document headings. For best results, do not copy and paste the number; instead, type the docket number into the Search box using hyphens. Then, click on the Search button. You may submit a comment by clicking on “Comment.” Comments may also be submitted by mail using the following address: Bureau of Land Management, Division of Solid Minerals, 1849 C Street NW, Room 5645, Washington, DC 20240.

### FOR FURTHER INFORMATION CONTACT:

Steven Feldgus, Deputy Assistant Secretary, Land and Minerals Management, (202) 208–6734 or by email at [miningreform@ios.doi.gov](mailto:miningreform@ios.doi.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 for contacting (Mr. Feldgus). 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:** On February 24, 2021, President Biden signed Executive Order (E.O.) 14017, “America’s Supply Chains.” On June 8, 2021, the White House released the 100-Day reviews directed by E.O. 14017, which included a recommendation for the Federal government to establish “an interagency team with expertise in mine permitting and environmental law to identify gaps in statutes and regulations that may need to be updated to ensure new production meets strong environmental standards throughout the lifecycle of the project; ensure meaningful community consultation and consultation with tribal nations, respecting the government-to-government relationship, at all stages of the mining process; and examine opportunities to reduce time, cost, and risk of permitting without compromising these strong environmental and consultation

benchmarks.”<sup>1</sup> On September 16, 2021, the Department of the Interior (Department) received a petition for rulemaking pursuant to the Department’s regulations at 43 CFR part 14 from 9 Tribal and 31 conservation groups requesting “a rulemaking to strengthen and modernize [the Bureau of Land Management’s] regulations at 43 CFR 3800 *et seq.*” On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA); section 40206 of the IIJA, “Critical Minerals Supply Chains and Reliability,” directs the Secretaries of the Interior and Agriculture to submit a report to Congress by November 15, 2022, that “identifies additional measures, including regulatory and legislative proposals, if appropriate, that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals.”

To respond to these directives and the rulemaking petition, the Department has created an interagency working group (IWG) on Federal hardrock mining laws, regulations, and permitting, chaired by the Department and including the Department of Agriculture through the U.S. Forest Service; the Environmental Protection Agency; the Army Corps of Engineers; the Departments of Commerce, Energy, and State; the Council on Environmental Quality; and the National Economic Council. For the purposes of the IWG, “hardrock” minerals are those mineral resources that are subject to disposal under the Mining Law of 1872.

The IWG intends to convene agency experts and receive input from the public in order to assess the adequacy of existing laws, regulations, and permitting processes, determine whether changes to those are necessary to meet the goals laid out in the recommendation from the E.O. 14017 100-Day reviews, and if it concludes that changes are necessary, make recommendations to the appropriate Federal agencies or Congress on how to implement those changes. The IWG will consider a broad range of issues related to mining, such as:

- Would alternatives to the existing claim system, such as leasing, or adjustments to the current system, such as incorporating mining into comprehensive federal lands use

assessments and planning, lead to better outcomes for communities, environment and a secure domestic supply of minerals? If so, how should such an alternative or adjusted system be structured?

- Are there international mining best practices or standards that the United States should consider adopting, or encouraging the U.S. mining industry to adopt? If so, which practices or standards and what improvements or benefits would they provide?

- If the U.S. were to place royalties on hardrock minerals produced from public domain lands, what factors should be considered and what structures would best protect the interests of the taxpayer while responsibly incentivizing production? In addition, if royalties were collected, how should those revenues be allocated?

- What changes to financial assurance requirements for mining should be considered?

- How might the U.S. best support reclamation of existing AML sites including the development of meaningful good Samaritan proposals as well as remining and reprocessing of mine tailings and waste, where feasible?

- What would a successful mine reclamation program include? Are there existing programs that the U.S. should adopt?

- How can Tribes and local communities be effectively engaged early in the process to ensure that they have meaningful input into the development of mine proposals?

- How could updates to the Mining Law of 1872, or other relevant statutes, help provide more certainty and timeliness in the permitting process?

- What improvements can be made to the mine permitting process without reducing opportunities for public input or limiting the comprehensiveness of environmental reviews?

- What types of incentives would be appropriate to encourage the development of critical minerals, and what is the proper definition of a “critical mineral mine”?

- Are there areas that should be off-limits from mining, and if so, how should those be identified?

- What science and data should be included in any decisions to permit and develop mines?

This list is not meant to be comprehensive; it is simply a reflection of the breadth of the issues under the IWG’s purview.

To inform the IWG’s deliberations, in addition to soliciting comment from any interested member of the public through

the end of July 2022, the IWG will host a series of roundtables, either virtually or in-person, for different stakeholder groups, including but not limited to:

- Native American Tribes;
- state and local governments;
- environmental justice groups;
- labor organizations;
- the hardrock mining industry;
- Non-governmental organizations representing environmental, conservation, and recreation interests;
- scientists; and
- other experts in mining laws, regulations, and permitting.

Additional information regarding these roundtables will be provided at a later date through publication in the **Federal Register** and on agency websites. The roundtables will be open to the public but speaking opportunities will be by invitation only. The Department welcomes nominations for speakers for each of the stakeholder groups listed above, and also suggestions for roundtables for additional stakeholder groups that are not listed.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 23, 2022.

**Tommy Beaudreau,**

*Deputy Secretary, U.S. Department of the Interior.*

[FR Doc. 2022–06750 Filed 3–30–22; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNVL0000–L51100000–GN0000–LVEMF190482A 19X MO: 4500154824]

### Notice of Intent To Prepare an Environmental Impact Statement for the Bald Mountain Mine Plan of Operations Amendment Juniper Project White Pine County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the

<sup>1</sup> The White House, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth*, June 2021, p. 14. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/08/fact-sheet-biden-harris-administration-announces-supply-chain-disruptions-task-force-to-address-short-term-supply-chain-discontinuities/>.

Bureau of Land Management (BLM) Ely District Bristlecone Field Office (BFO), Nevada, intends to prepare an Environmental Impact Statement (EIS) for the Bald Mountain Mine Plan of Operations Amendment (Juniper Project). This notice initiates the scoping process and opens a 30-day public comment period to solicit public comments and identify potential issues for analysis.

**DATES:** The BLM requests comments concerning the scope of the analysis that will guide the NEPA process, including the range of alternatives and issues analyzed in the EIS. All comments must be received by May 2, 2022. The Draft EIS is scheduled to be published in July 2022, and the Final EIS is scheduled to be published in November 2022, with a Record of Decision scheduled to be issued in January 2023. The BLM will announce dates of scoping meetings at least 15 days in advance of the meeting on the BLM National ePlanning website—<https://go.usa.gov/xAm2g>. Scoping meetings will be held online.

**ADDRESSES:** Send written comments to BLM Bristlecone Field Office, ATTN: BMM EIS Project, 702 North Industrial Way, Ely, Nevada 89301. Comments may also be sent via email to [blm\\_nv\\_eydo\\_juniper\\_eis@blm.gov](mailto:blm_nv_eydo_juniper_eis@blm.gov). Submit comments online at the website <https://go.usa.gov/xAm2g>.

**FOR FURTHER INFORMATION CONTACT:** Concetta Brown, Natural Resource Specialist, (775) 289-1885, or email [ccbrown@blm.gov](mailto:ccbrown@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 Bald Mountain Mine (BMM) is a 10,782-acre open-pit gold mine located primarily on public lands administered by the BLM located approximately 60 miles southeast of the city of Elko, Nevada, and 60 miles northwest of Ely in White Pine County, Nevada. KG Mining (Bald Mountain) Inc. (KG-BM) is the owner and operator of the BMM. The proposed expansion and development of mining components and extension of the mine life would enable KG-BM to enhance operational efficiencies and increase extraction of ore for processing and gold recovery in a cost-effective and optimal manner. The BLM BFO is the lead agency for purposes of the NEPA analysis with other agencies serving as

cooperating agencies. In particular, the United States Fish and Wildlife Service (Service) is a cooperating agency with the BLM on the development of this Draft EIS to analyze the potential impacts of approving KG-BM's request for an incidental take permit for golden eagles pursuant to 50 CFR 22.2 and 22.26 implementing the Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668-668c). The Service will evaluate the KG-BM's Eagle Conservation Plan (ECP), which describes their request for the removal of golden eagle nests and for incidental disturbance take to nesting golden eagles under the Eagle Act.

#### **Purpose and Need for the Proposed Action**

The purpose of the Juniper Project is to continue mining operations by creating and expanding mine areas located within the North Operations Area (NOA), including the ongoing exploration activities within the Bald Mountain Mine Plan of Operations boundary area. In order to meet these objectives, KG-BM would expand, modify, and eliminate select authorized mine components and develop new disturbance located within the NOA. The need for the action is established by the BLM's responsibility under the Mining Law of 1872, Section 302 of the FLPMA, and the BLM Surface Management Regulations at 43 CFR 3809. Under these statutes and regulations, the BLM is required to review the Juniper Project to ensure that the KG-BM activities include appropriate reclamation and do not cause unnecessary or undue degradation of the public lands.

The Service's purpose for its Federal action is to respond to KG-BM's request for a take permit for golden eagles under the Eagle Act, associated with KG-BM's mining operations at the Bald Mountain Mine. The Juniper Project would affect golden eagle nests and territories by mining activities near golden eagle nests; therefore, KG-BM has requested authorization from the Service to remove and disturb golden eagle nests under the Eagle Act. KG-BM's ECP is the foundation of the permit application and contains commitments to avoid, minimize, and mitigate adverse effects on golden eagles resulting from the implementation of the Juniper Project. Issuance of an eagle take permit must comply with the Eagle Act and all related regulatory requirements (50 CFR 22.26).

In accordance with 50 CFR 22.25 and 22.26 implementing the Eagle Act, the Service must make a permitting decision that may enable KG-BM to

continue mining operations that are consistent with the Eagle Act regulations. In responding to the request for a permit, the Service must ensure compliance with the Eagle Act and the goal of maintaining stable or increasing breeding populations of Bald and Golden Eagles. The Service will consider issuance of an Eagle Act permit if: (1) The nest removal and incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act; (3) the applicant has avoided and minimized impacts to eagles to the extent practicable; and (4) compensatory mitigation will be provided for any take.

#### **Preliminary Proposed Action and Alternatives**

The Bald Mountain Mine has been in continuous operation for more than 40 years; thus, mine areas are in various stages of development, operation, and reclamation. The BMM is subdivided into two plan of operation areas which consist of the NOA (BLM case number NVN-082888/Reclamation Permit No. 0025) and South Operations Area (BLM case number NVN-090443/Reclamation Permit No. 0033).

The BLM received a proposal from KG-BM—which owns and operates the Bald Mountain Mine—to amend the authorized NOA Plan of Operations. The NOA Plan of Operations is comprised of non-contiguous mine areas connected by haul roads. The proposal, which constitutes the proposed action and is referred to as the Juniper Project, generally involves:

- Extension of the NOA Plan boundary in five areas resulting in an increase of 3,425 acres;
- Expansion, reclassification, realignment, elimination, and creation of mine areas and select mine components resulting in net disturbance increase totaling 3,969 acres (including expanding and/or deepening seven authorized open pits and developing two new pits; developing three and modifying thirteen authorized rock disposal areas (RDAs) and other related disturbance);
- Increasing the height of a heap leach facility;
- Increasing the height of Poker Flats heap;
- New and realigned infrastructure (such as powerlines, fencing, wells, and piezometers);
- Developing and modifying haul roads;
- Maintaining existing footprints for select authorized mine components;
- Elimination of portions of mine components that have not been constructed;

- Re-establishing the Top underground mine;
- Sequencing and a backfill of the Poker Flats Pit;
- Planned concurrent reclamation; and
- Extension of NOA mine life by 11 years.

The proposed action would change total life-of-mine disturbance by adding 4,114 acres of new disturbance, reclassifying 877 acres, and eliminating 145 acres of authorized disturbance. This would result in an addition of 3,969 acres of net new disturbance. The new total life-of-mine disturbance would be 14,752 acres within the extended NOA Plan boundary. The proposed increase would comprise 1.5 acres of new disturbance on private land controlled by KG–BM and approximately 3,967 acres of net new disturbance located on public lands administered by the BLM.

The Juniper Project may affect golden eagle territories; therefore, KG–BM in coordination with the Service has prepared and submitted an ECP as part of the application to the Service for two eagle take permits associated with KG–BM's mining operations at the BMM.

In addition to the No Action (not approving the proposal to amend the plan of operations) and the Proposed Action, a possible alternative may include modifications to proposed mine components to facilitate mule deer migration through the NOA. Additional alternatives to be analyzed in detail in the EIS may be identified after the scoping process is completed.

#### Summary of Expected Impacts

In addition to potential impacts to golden eagles, preliminarily identified potential resource concerns include properties of cultural and religious importance, Native American concerns, potential impacts to cultural resources eligible for the National Register of Historic Places, potential impacts to mule deer habitat, and potential impacts to BLM sensitive species including but not limited to greater sage-grouse, ferruginous hawk, western burrowing owl, and the pygmy rabbit.

#### Anticipated Permits and Authorizations

The BLM anticipates that the following major permits and approvals will be required for the Juniper Project:

- Plan of Operations Amendment (BLM)
- Cultural Resources Mitigation (BLM/ State Historic Preservation Office)
- Eagle Take Permit for removal of golden eagle nests (Service)
- Eagle Take Permit for incidental disturbance (Service)
- Mining Reclamation Permit (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Class II Air Quality Operating Permit for Surface Area Disturbance Including a Dust Control Plan (Nevada Bureau of Environmental Protection, Bureau of Air Pollution Control)
- Water Pollution Control Permit, Bald Mountain Mine (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Water Pollution Control Permit, Mooney Basin Mine Project (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Water Rights Transfers (Nevada Division of Water Resources)
- Industrial Artificial Pond Bald Mountain Mine Primary Heap Leach Facility Permit (Nevada Department of Wildlife)
- Class III Landfill Waivers for the Redbird and South Duke RDA 2 Rock Disposal Areas (Nevada Division of Environmental Protection, Bureau of Waste Management)
- Permit to Operate a Public Water System, Royale Mine Area, if needed (Nevada Division of Environmental Protection, Bureau of Safe Drinking Water)

#### Schedule for the Decision-Making Process

The BLM anticipates a decision in November 2022.

#### Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. To maximize the opportunity for public input on this project while prioritizing the health and safety of BLM employees and the interested public, the BLM will host online virtual public scoping meetings to provide information and gather input on the project. The date(s) and information on how to login and participate in these virtual scoping meetings will be announced at least 15 days in advance through local media and on the BLM website at: <https://go.usa.gov/xAm2g>.

The BLM will use the fulfillment of the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in

identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. The Service will consult with Indian tribes within 109 miles of the project area on the proposed issuance of an eagle take permit in compliance with the Eagle Act. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM and Service to participate in the development of the environmental analysis as a cooperating agency.

#### Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

The BLM requests assistance with identifying potential alternatives to the Proposed Action for consideration. As alternatives should resolve a problem with the Proposed Action, please indicate the purpose of the suggested alternative. The BLM also requests that potential impacts that should be analyzed be identified. Impacts should be a result of the action; therefore, please identify the activity and the potential impact that should be analyzed. Information that reviewers have that would assist in the development of alternatives or analysis of resources issues is also helpful.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

#### Lead and Cooperating Agencies

The BLM is the lead agency. The Service, U.S. Environmental Protection Agency, Nevada Department of Wildlife, Nevada Department of Conservation and Natural Resources Sagebrush Ecosystem

Technical Team, White Pine County Commissioners, and Elko County are cooperating agencies on this EIS.

#### Decision Maker

Ely District Manager Robbie McAboy is the BLM Responsible Official.

#### Nature of Decision To Be Made

The BLM will decide whether to approve the proposal from KG–BM to amend the NOA Plan of Operations.

The Service will decide whether to authorize eagle take, which must comply with the Eagle Act.

#### Robbie J. McAboy,

*District Manager, Ely District Office.*

[FR Doc. 2022–06744 Filed 3–30–22; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNVL0000–L51100000–GN0000–LVEMF190482A 19X MO: 4500154824]

#### Notice of Intent To Prepare an Environmental Impact Statement for the Bald Mountain Mine Plan of Operations Amendment Juniper Project White Pine County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Ely District Bristlecone Field Office (BFO), Nevada, intends to prepare an Environmental Impact Statement (EIS) for the Bald Mountain Mine Plan of Operations Amendment (Juniper Project). This Notice initiates the scoping process and opens a 30-day public comment period to solicit public comments and identify potential issues for analysis.

**DATES:** The BLM requests comments concerning the scope of the analysis that will guide the NEPA process, including the range of alternatives and issues analyzed in the EIS. All comments must be received by May 2, 2022. The Draft EIS is scheduled to be published in July 2022, and the Final EIS is scheduled to be published in November 2022, with a Record of Decision scheduled to be issued in January 2023. The BLM will announce dates of scoping meetings at least 15 days in advance of the meeting on the BLM National ePlanning website—<https://go.usa.gov/xAm2g>. Scoping meetings will be held online.

**ADDRESSES:** Send written comments to BLM Bristlecone Field Office, ATTN: BMM EIS Project, 702 North Industrial Way, Ely, Nevada 89301. Comments may also be sent via email to [blm\\_nv\\_eydo\\_juniper\\_eis@blm.gov](mailto:blm_nv_eydo_juniper_eis@blm.gov). Submit comments online at the website <https://go.usa.gov/xAm2g>.

#### FOR FURTHER INFORMATION CONTACT:

Concetta Brown, Natural Resource Specialist, (775) 289–1885, or email [ccbrown@blm.gov](mailto:ccbrown@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 Bald Mountain Mine (BMM) is a 10,782-acre open-pit gold mine located primarily on public lands administered by the BLM located approximately 60 miles southeast of the city of Elko, Nevada, and 60 miles northwest of Ely in White Pine County, Nevada. KG Mining (Bald Mountain) Inc. (KG–BM) is the owner and operator of the BMM. The proposed expansion and development of mining components and extension of the mine life would enable KG–BM to enhance operational efficiencies and increase extraction of ore for processing and gold recovery in a cost-effective and optimal manner. The BLM BFO is the lead agency for purposes of the NEPA analysis with other agencies serving as cooperating agencies. In particular, the United States Fish and Wildlife Service (Service) is a cooperating agency with the BLM on the development of this Draft EIS to analyze the potential impacts of approving KG–BM's request for an incidental take permit for golden eagles pursuant to 50 CFR 22.2 and 22.26 implementing the Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668c). The Service will evaluate the KG–BM's Eagle Conservation Plan (ECP), which describes their request for the removal of golden eagle nests and for incidental disturbance take to nesting golden eagles under the Eagle Act.

#### Purpose and Need for the Proposed Action

The purpose of the Juniper Project is to continue mining operations by creating and expanding mine areas located within the North Operations Area (NOA), including the ongoing exploration activities within the Bald Mountain Mine Plan of Operations

boundary area. In order to meet these objectives, KG–BM would expand, modify, and eliminate select authorized mine components and develop new disturbance located within the NOA. The need for the action is established by the BLM's responsibility under the Mining Law of 1872, section 302 of the FLPMA, and the BLM Surface Management Regulations at 43 CFR 3809. Under these statutes and regulations, the BLM is required to review the Juniper Project to ensure that the KG–BM activities include appropriate reclamation and do not cause unnecessary or undue degradation of the public lands.

The Service's purpose for its Federal action is to respond to KG–BM's request for a take permit for golden eagles under the Eagle Act, associated with KG–BM's mining operations at the Bald Mountain Mine. The Juniper Project would affect golden eagle nests and territories by mining activities near golden eagle nests; therefore, KG–BM has requested authorization from the Service to remove and disturb golden eagle nests under the Eagle Act. KG–BM's ECP is the foundation of the permit application and contains commitments to avoid, minimize, and mitigate adverse effects on golden eagles resulting from the implementation of the Juniper Project. Issuance of an eagle take permit must comply with the Eagle Act and all related regulatory requirements (50 CFR 22.26).

In accordance with 50 CFR 22.25 and 22.26 implementing the Eagle Act, the Service must make a permitting decision that may enable KG–BM to continue mining operations that are consistent with the Eagle Act regulations. In responding to the request for a permit, the Service must ensure compliance with the Eagle Act and the goal of maintaining stable or increasing breeding populations of Bald and Golden Eagles. The Service will consider issuance of an Eagle Act permit if: (1) The nest removal and incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act; (3) the applicant has avoided and minimized impacts to eagles to the extent practicable; and (4) compensatory mitigation will be provided for any take.

#### Preliminary Proposed Action and Alternatives

The Bald Mountain Mine has been in continuous operation for more than 40 years; thus, mine areas are in various stages of development, operation, and reclamation. The BMM is subdivided into two plan of operation areas which consist of the NOA (BLM case number

NVN-082888/Reclamation Permit No. 0025) and South Operations Area (BLM case number NVN-090443/Reclamation Permit No. 0033).

The BLM received a proposal from KG-BM—which owns and operates the Bald Mountain Mine—to amend the authorized NOA Plan of Operations. The NOA Plan of Operations is comprised of non-contiguous mine areas connected by haul roads. The proposal, which constitutes the proposed action and is referred to as the Juniper Project, generally involves:

- Extension of the NOA Plan boundary in five areas resulting in an increase of 3,425 acres;
  - Expansion, reclassification, realignment, elimination, and creation of mine areas and select mine components resulting in net disturbance increase totaling 3,969 acres (including expanding and/or deepening seven authorized open pits and developing two new pits; developing three and modifying thirteen authorized rock disposal areas (RDAs) and other related disturbance);
    - Increasing the height of a heap leach facility;
    - Increasing the height of Poker Flats heap;
    - New and realigned infrastructure (such as powerlines, fencing, wells, and piezometers);
      - Developing and modifying haul roads;
      - Maintaining existing footprints for select authorized mine components;
      - Elimination of portions of mine components that have not been constructed;
      - Re-establishing the Top underground mine;
      - Sequencing and a backfill of the Poker Flats Pit;
      - Planned concurrent reclamation;
  - Extension of NOA mine life by 11 years.

The proposed action would change total life-of-mine disturbance by adding 4,114 acres of new disturbance, reclassifying 877 acres, and eliminating 145 acres of authorized disturbance. This would result in an addition of 3,969 acres of net new disturbance. The new total life-of-mine disturbance would be 14,752 acres within the extended NOA Plan boundary. The proposed increase would comprise 1.5 acres of new disturbance on private land controlled by KG-BM and approximately 3,967 acres of net new disturbance located on public lands administered by the BLM.

The Juniper Project may affect golden eagle territories; therefore, KG-BM in coordination with the Service has

prepared and submitted an ECP as part of the application to the Service for two eagle take permits associated with KG-BM's mining operations at the BMM.

In addition to the No Action (not approving the proposal to amend the plan of operations) and the Proposed Action, a possible alternative may include modifications to proposed mine components to facilitate mule deer migration through the NOA. Additional alternatives to be analyzed in detail in the EIS may be identified after the scoping process is completed.

#### Summary of Expected Impacts

In addition to potential impacts to golden eagles, preliminarily identified potential resource concerns include properties of cultural and religious importance, Native American concerns, potential impacts to cultural resources eligible for the National Register of Historic Places, potential impacts to mule deer habitat, and potential impacts to BLM sensitive species including but not limited to greater sage-grouse, ferruginous hawk, western burrowing owl, and the pygmy rabbit.

#### Anticipated Permits and Authorizations

The BLM anticipates that the following major permits and approvals will be required for the Juniper Project:

- Plan of Operations Amendment (BLM)
- Cultural Resources Mitigation (BLM/ State Historic Preservation Office)
- Eagle Take Permit for removal of golden eagle nests (Service)
- Eagle Take Permit for incidental disturbance (Service)
- Mining Reclamation Permit (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Class II Air Quality Operating Permit for Surface Area Disturbance Including a Dust Control Plan (Nevada Bureau of Environmental Protection, Bureau of Air Pollution Control)
- Water Pollution Control Permit, Bald Mountain Mine (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Water Pollution Control Permit, Mooney Basin Mine Project (Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation)
- Water Rights Transfers (Nevada Division of Water Resources)
- Industrial Artificial Pond Bald Mountain Mine Primary Heap Leach Facility Permit (Nevada Department of Wildlife)
- Class III Landfill Waivers for the Redbird and South Duke RDA 2 Rock

Disposal Areas (Nevada Division of Environmental Protection, Bureau of Waste Management)

- Permit to Operate a Public Water System, Royale Mine Area, if needed (Nevada Division of Environmental Protection, Bureau of Safe Drinking Water)

#### Schedule for the Decision-Making Process

The BLM anticipates a decision in November 2022.

#### Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. To maximize the opportunity for public input on this project while prioritizing the health and safety of BLM employees and the interested public, the BLM will host online virtual public scoping meetings to provide information and gather input on the project. The date(s) and information on how to login and participate in these virtual scoping meetings will be announced at least 15 days in advance through local media and on the BLM website at: <https://go.usa.gov/xAm2g>.

The BLM will use the fulfillment of the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (16 U.S.C 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. The Service will consult with Indian tribes within 109 miles of the project area on the proposed issuance of an eagle take permit in compliance with the Eagle Act. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM and Service to participate in the development of the environmental analysis as a cooperating agency.

### Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

The BLM requests assistance with identifying potential alternatives to the Proposed Action for consideration. As alternatives should resolve a problem with the Proposed Action, please indicate the purpose of the suggested alternative. The BLM also requests that potential impacts that should be analyzed be identified. Impacts should be a result of the action; therefore, please identify the activity and the potential impact that should be analyzed. Information that reviewers have that would assist in the development of alternatives or analysis of resources issues is also helpful.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

### Lead and Cooperating Agencies

The BLM is the lead agency. The Service, U.S. Environmental Protection Agency, Nevada Department of Wildlife, Nevada Department of Conservation and Natural Resources Sagebrush Ecosystem Technical Team, White Pine County Commissioners, and Elko County are cooperating agencies on this EIS.

### Decision Maker

Ely District Manager Robbie McAboy is the BLM Responsible Official.

### Nature of Decision To Be Made

The BLM will decide whether to approve the proposal from KG-BM to amend the NOA Plan of Operations.

The Service will decide whether to authorize eagle take, which must comply with the Eagle Act.

### Robbie J. McAboy,

*District Manager, Ely District Office.*

[FR Doc. 2022-06821 Filed 3-30-22; 8:45 am]

**BILLING CODE 4310-HC-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NRNL-DTS#-33629;  
PPWOCRADIO, PCU00RP14.R50000]

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before March 19, 2022, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by April 15, 2022.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National\_Register\_Submissions@nps.gov* with the subject line "Public Comment on <property or proposed district name, (County) State>." If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry\_frear@nps.gov*, 202-913-3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 19, 2022. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

## MASSACHUSETTS

### Hampden County,

War Memorial Building, 310 Appleton St., Holyoke, SG100007663

### Hampshire County

Clarke School for the Deaf Historic District, 40-42, 44, 45, 46, 47, 48, 50 and 54 Round Hill Rd., Northampton, SG100007664

### Worcester County

Indian Hill School, 155 Ararat St., Worcester, SG100007665

## TEXAS

### Travis County

Huston-Tillotson College (East Austin MRA), 900 Chicon St., Austin, MP100007662

## WISCONSIN

### Lafayette County

Darlington Carnegie Free Library (Public Library Facilities of Wisconsin MPS), 525 Main St., Darlington, MP100007661

(Authority: 36 CFR 60.13)

Dated: March 22, 2022.

### Lisa Davidson,

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2022-06820 Filed 3-30-22; 8:45 am]

**BILLING CODE 4312-52-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1174-1175  
(Second Review)]

### Seamless Refined Copper Pipe and Tube From China and Mexico; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty orders on seamless refined copper pipe and tube from China and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** February 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Nitin Joshi (202-708-1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On February 4, 2022, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 60287, November 1, 2021) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

*Staff report.*—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on March 30, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party

other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before April 8, 2022, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by April 8, 2022. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

*Authority:* These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 28, 2022.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2022–06799 Filed 3–30–22; 8:45 am]

**BILLING CODE 7020–02–P**

**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms and Explosives**

[OMB 1140–0032]

**Agency Information Collection Activities; Proposed eCollection of eComments Requested; Records of Acquisition and Disposition, Collectors of Firearms**

**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 submit 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 collection OMB 1140–0032 (Records of Acquisition and Disposition, Collectors of Firearms) is being renamed Records of Acquisition and Disposition, Dealers of Type 01/02 Firearms, and Collectors of Type 03 Firearms. This collection is also being revised due to an increase in the total respondents, responses, and burden hours since the last renewal in 2020. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments regarding 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: Dawn Smith, ATF Firearms Industry Programs Branch, by mail at 244 Needy Road, Martinsburg, WV 25405, email at [fipb-informationcollection@atf.gov](mailto:fipb-informationcollection@atf.gov), or telephone at 202–648–0890.

**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;

<sup>1</sup> A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

<sup>2</sup> The Commission has found the joint response to its Notice of Institution filed on behalf of Mueller Copper Tube Products, Inc., Mueller Copper Tube West Co., Mueller Tube Company Inc., Howell Metal Company, Linesets, Inc., and Cerro Flow Products, LLC, domestic producers of seamless refined copper pipe and tube, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).



- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

### Overview of This Information Collection

#### 1. Type of Information Collection

(check justification or form 83):  
Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:*  
Records of Acquisition and Disposition, Collectors of Firearms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*  
*Form number (if applicable):* None.  
*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:*

*Primary:* Business or other for-profit.  
*Other (if applicable):* Individuals or households.

*Abstract:* The recordkeeping requirement for this collection allows Bureau of Alcohol, Tobacco, Firearms and Explosives personnel to inquire about firearms acquisition and disposition (A&D) records, during the course of criminal investigations or government compliance inspections.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 114,001 respondents will prepare records for this collection once annually, and it will take each respondent approximately 3.05 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 347,703 hours, which is equal to 114,001 (total respondents) \* 1 (# of response per respondent) \* 3.05 hours (the total time taken to prepare each response).

7. *An Explanation of the Change in Estimates:* The adjustment associated with this collection includes an increase

in the totals respondents and responses by 62,025, due to the addition of Type 01/02 firearms dealers and Type 03 firearms collectors. Consequently, the total burden hours have also increased by 189,176 since the last renewal in 2020.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E-405A, Washington, DC 20530.

Dated: March 28, 2022.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2022-06798 Filed 3-30-22; 8:45 am]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended ("CERCLA")

On March 25, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Michigan in the lawsuit entitled *United States v. Acemco Incorporated, et al.*, Civil Action No. 22-10640.

The United States filed a complaint under CERCLA for recovery of its costs spent at the Dearborn Refining Superfund Site in Dearborn, Michigan. The complaint alleges that the 14 named defendants sent waste containing hazardous substances to the Site. Each of the named defendants signed the proposed consent decree. Under the agreement, the named defendants would pay \$880,000 for the United States' past costs at the Site and 50% of the United States' future costs, as defined in the consent decree, at the Site. In return, the United States agrees not sue the named defendants to recover past or future response costs under CERCLA Section 107.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Acemco Incorporated, et al.*, D.J. Ref. No. 90-7-1-704/8. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$50.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is \$5.25.

**Patricia McKenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2022-06781 Filed 3-30-22; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Judgment Under the Resource Conservation and Recovery Act

On March 24, 2022, the Department of Justice lodged a proposed consent judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America v. Genesis Petroleum, Inc., et al.*, Civil Action No. 19-cv-3340.

The United States, on behalf of the Environmental Protection Agency ("EPA"), filed the complaint in this Resource Conservation and Recovery Act ("RCRA") case on June 5, 2019. The Complaint alleges that Genesis Petroleum, Inc., Technic Management, Inc., Gulden Inc., 2664 RT 112 Realty Corp., 607 Station Road Realty Inc., 1000 Motor Parkway Central Islip LLC, 616 Broadway LLC, Freeport Realty LLC, 199 E Sunrise Highway Realty Corp., 465 Nassau Road Realty Corp., Camlica, Inc., Kucukbey Corp., North Country Road Realty LLC; Elizabeth NJPO LLC, Elizabeth NJPG LLC, Perth Amboy NJPO LLC, Perth Amboy NJPG LLC, Newark NJPO LLC, Newark NJPG LLC, North Bergen NJPO LLC, and North Bergen NJPG LLC (collectively,

“Defendants”) are civilly liable for violations of regulations promulgated under RCRA Subchapter IX governing underground storage tanks. The complaint alleges that Defendants failed to comply with RCRA regulations as administered by the EPA for underground storage tanks at 13 facilities owned and/or operated by Defendants in New York and New Jersey.

The alleged violations include the failure to: Install and use spill prevention equipment; use overflow prevention equipment; provide release detection for USTs; provide release detection for pressurized piping; test automatic line leak detectors; report suspected releases; perform release detection for USTs that were temporarily closed but still contained more than three feet of petroleum products; maintain and timely provide records of release detection monitoring; timely respond to requests for information issued by EPA and maintain financial responsibility and evidence of financial responsibility.

Under the Proposed Consent Judgment, Defendants shall ensure and maintain compliance with RCRA UST regulations at 29 facilities that they own and/or operate in New York and New Jersey. Defendants will pay a civil penalty of \$250,000. The Proposed Consent Judgment will resolve all RCRA claims alleged in this action by the United States against Defendants.

The publication of this notice opens a period for public comment on the Proposed Consent Judgment should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States v. Genesis Petroleum, Inc., et al.*, D.J. Ref. No. 90–7–1–11202. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Judgment upon written request

and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2022–06791 Filed 3–30–22; 8:45 am]

**BILLING CODE 4410–15–P**

**DEPARTMENT OF LABOR**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before May 2, 2022.

**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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

*Comments are invited on:* (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who

are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Under the Affordable Care Act, Congress added Public Health Service Act (the PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) issued final implementing regulations on November 18, 2015 (80 FR 72191). With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations. The No Surprises Act of 2020 extended the balance billing protections related to external reviews to grandfathered plans. This collection of information request includes the information collection and third-party notice and disclosure requirements that a plan must satisfy under the statutes and regulations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 9, 2021 (86 FR 62206).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–EBSA.

*Title of Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans.

*OMB Control Number:* 1210-0144.

*Affected Public:* Private Sector—Businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of*

*Respondents:* 2,007,298.

*Total Estimated Number of*

*Responses:* 390,574.

*Total Estimated Annual Time Burden:* 19,047 hours.

*Total Estimated Annual Other Costs Burden:* \$602,026.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 25, 2022.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2022-06810 Filed 3-30-22; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before May 2, 2022.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA-2022-0016 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2022-0016.

2. *Fax:* 202-693-9441.

3. *Email:* [petitioncomments@dol.gov](mailto:petitioncomments@dol.gov).

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

*Attention:* S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting

MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [Petitionsformodification@dol.gov](mailto:Petitionsformodification@dol.gov) (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

#### II. Petition for Modification

*Docket Number:* M-2022-007-M.

*Petitioner:* Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada 89801.

*Mine:* Twin Underground Mine, MSHA ID No. 26-02693, located in Humboldt County, Nevada.

*Regulation Affected:* 30 CFR 57.11052(d), Refuge areas.

*Modification Request:* The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground portal gold mine with five refuge chambers located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) The refuge chambers are MineARC refuge chambers and are made of steel.

The five refuge chambers are equipped for a maximum capacity of 16 miners. This capacity exceeds the normal work crew of approximately 20 miners underground on any shift.

(c) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(d) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(e) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(f) The five refuge chambers at the mine are portable. Allowing the use of refuge chambers which do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed individual portion-sized pouches in each refuge chamber. The water is supplied by the case and packaged into 4.227 fluid ounce/125 milliliter portions with 50 individual portion sizes per case.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 36 hours. The total amount of water provided in each refuge chamber will be nine cases of water with 6.25 liters of water/case.

(c) The water will have a maximum shelf life of 5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2022-06808 Filed 3-30-22; 8:45 am]

**BILLING CODE 4520-43-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before May 2, 2022.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA-2022-0017 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2022-0017.

2. *Fax:* 202-693-9441.

3. *Email:* [petitioncomments@dol.gov](mailto:petitioncomments@dol.gov).

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

*Attention:* S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [Petitionsformodification@dol.gov](mailto:Petitionsformodification@dol.gov) (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

#### II. Petition for Modification

*Docket Number:* M-2022-008-M.

*Petitioner:* Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada, 89801.

*Mine:* Meikle Mine, MSHA ID No. 26-02246, located in Eureka County, Nevada.

*Regulation Affected:* 30 CFR 57.11052(d), Refuge areas.

*Modification Request:* The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground shaft gold mine with 17 refuge chambers with 16 located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) Thirteen of the refuge chambers are MineARC refuge chambers and are made out of steel. The remaining four are mined-out crosscuts with bulkheads that were developed into refuge chambers. The refuge chambers are equipped for a maximum capacity of

between 12 and 16 miners each. The capacity of the 16 underground refuge chambers exceeds the normal work crew of approximately 100 miners underground on any shift.

(c) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(d) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(e) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(f) Thirteen of the refuge chambers at the mine are portable. Allowing the use of refuge chambers which do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed individual portion-sized pouches in each refuge chamber. The water is supplied by the case and packaged into 4.225 fluid ounce/125 milliliter portions with 100 individual portion sizes per case.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 4 days. The total amount of water provided will vary depending on the maximum capacity of the refuge chamber. In a 12-man refuge chamber, a minimum of 17 cases of water will be provided. In a 16-man refuge chamber, a minimum of 24 cases of water will be provided.

(c) The water will have a maximum shelf life of 5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of

water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2022-06809 Filed 3-30-22; 8:45 am]

**BILLING CODE 4520-43-P**

## LEGAL SERVICES CORPORATION

### Notice to LSC Grantees of Application Process for Making 2022 Mid-Year and 2023 Basic Field Fund Subgrants

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of application dates and format for applications for approval to make 2022 mid-year and 2023 Basic Field Grant fund subgrants.

**SUMMARY:** The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the submission dates for applications to make 2022 mid-year and 2023 Basic Field Grant fund subgrants. LSC is also providing information about where applicants may locate subgrant application questions and directions for providing the information required to apply for a subgrant.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for application dates.

**ADDRESSES:** Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007-3522.

**FOR FURTHER INFORMATION CONTACT:** Megan Lacchini, Office of Compliance and Enforcement at [lacchinim@lsc.gov](mailto:lacchinim@lsc.gov) or (202) 295-1506 or visit the LSC website at <http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant>.

**SUPPLEMENTARY INFORMATION:** Under 45 CFR part 1627, LSC must publish, on an annual basis, "notice of the

requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's website." 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application on LSC's website satisfy § 1627.4(b)'s notice requirement for the Basic Field Grant program. Only current or prospective recipients of LSC Basic Field Grants may apply for approval to subgrant these funds.

Applications for approval to make 2022 mid-year and calendar year 2023 Basic Field Grant fund subgrants will be available on or around April 11, 2022. An applicant must apply to make a mid-year subgrant of LSC Basic Field Grant funds through GrantEase at least 45 days before the subgrant's proposed effective date. 45 CFR 1627.4(b)(2). An applicant must apply to make calendar year subgrants of 2023 Basic Field Grant funds through GrantEase in conjunction with its application(s) for 2023 Basic Field Grant funding. 45 CFR 1627.4(b)(1). The deadline for 2023 Basic Field Grant funding application submissions is June 17, 2022 by 11:59 p.m. EDT.

All applicants must provide answers to the application questions in GrantEase and upload the following documents:

- A draft subgrant agreement (with the required terms provided in LSC's Subgrant Agreement Template); and
- A subgrant budget (using LSC's Subgrant Budget Template)

Applicants seeking to subgrant to a new subrecipient that is not a current LSC grantee, or to renew a subgrant with an organization that is not a current LSC grantee in a year in which the applicant is required to submit a full funding application must also upload:

- The subrecipient's accounting manual;
- The subrecipient's most recent audited financial statements;
- The subrecipient's current cost allocation policy (if not in the accounting manual); and
- The recipient's 45 CFR part 1627 Policy (required under 45 CFR 1627.7).

A list of subgrant application questions, the Subgrant Agreement Template, and the Subgrant Budget Template are available on LSC's website at <http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant>.

LSC encourages applicants to use LSC's Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC's Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the submitted documents or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through GrantEase by the date requested.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove or approve an application for a 2022 mid-year subgrant no later than the subgrant's proposed effective date. As required by 45 CFR 1627.4(b)(1)(ii), LSC will inform applicants of its decision to disapprove or approve a 2023 calendar-year subgrant no later than the date LSC informs applicants of LSC's 2023 Basic Field Grant funding decisions.

(Authority: 42 U.S.C. 2996g(e))

Dated: March 25, 2022.

**Stefanie Davis,**

*Senior Associate General Counsel.*

[FR Doc. 2022-06758 Filed 3-30-22; 8:45 am]

**BILLING CODE 7050-01-P**

## NATIONAL SCIENCE FOUNDATION

### Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Astronomy and Astrophysics Advisory Committee (#13883).

*Date and Time:* June 6, 2022; 12:00 p.m.–4:00 p.m. (Eastern).

*Place:* NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Attendance information for the meeting will be forthcoming on the website: <https://www.nsf.gov/mps/ast/aaac.jsp>.

*Type of Meeting:* Open.

*Contact Persons:* Martin Still, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703-292-4290.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

*Agenda:* To provide updates on Agency activities.

Dated: March 28, 2022.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2022-06770 Filed 3-30-22; 8:45 am]

**BILLING CODE 7555-01-P**

**POSTAL REGULATORY COMMISSION**

[Docket Nos. CP2016–59; CP2019–69; CP2020–82; CP2020–258; CP2021–119; and CP2021–134]

**New Postal Products**

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* April 4, 2022.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- 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.<sup>1</sup>

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):* CP2016–59; *Filing Title:* USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 9, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* April 4, 2022.

2. *Docket No(s):* CP2019–69; *Filing Title:* USPS Notice of Amendment to Parcel Select & Parcel Return Service Contract 7, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 4, 2022.

3. *Docket No(s):* CP2020–82; *Filing Title:* USPS Notice of Amendment to Parcel Select & Parcel Return Service Contract 10, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* April 4, 2022.

4. *Docket No(s):* CP2020–258; *Filing Title:* USPS Notice of Amendment to Priority Mail and Parcel Select Contract 4, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 4, 2022.

5. *Docket No(s):* CP2021–119; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 715, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* April 4, 2022.

<sup>1</sup> 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).

6. *Docket No(s):* CP2021–134; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 76, Filed Under Seal; *Filing Acceptance Date:* March 25, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 4, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,  
*Secretary.*

[FR Doc. 2022–06824 Filed 3–30–22; 8:45 am]

**BILLING CODE 7710–FW–P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 34544]

**Application: Deregistration Under the Investment Company Act**

March 25, 2022.

**AGENCY:** Securities and Exchange Commission (“Commission” or “SEC”)

**ACTION:** Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov) and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the

matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*.

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

**361 Social Infrastructure Fund [File No. 811-23479]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on January 11, 2022, and amended on March 2, 2022.

*Applicant's Address:* *Joy.ausili@mfaca.com*.

**BMO Funds, Inc. [File No. 811-58433]**

*Summary:* Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Columbia Funds Series Trust, Columbia Funds Series Trust I, Columbia Funds Series Trust II, and Goldman Sachs Trust, and on December 10, 2021, January 21, 2022, and February 11, 2022 made a final distribution to its shareholders based on net asset value. Expenses of \$1,622,594 incurred in connection with the reorganization were paid by the applicant's investment adviser or its affiliates.

*Filing Date:* The application was filed on February 25, 2022.

*Applicant's Address:* *timothy.bonin@bmo.com*.

**Eaton Vance Floating-Rate Income Plus Fund [File No. 811-22821]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 24, 2021, October 29, 2021, and December 28, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$551,349 incurred in connection with the liquidation were paid by the applicant and the applicant's investment adviser.

*Filing Date:* The application was filed on February 22, 2022.

*Applicant's Address:* *jbeksha@eatonvance.com*.

**Eaton Vance New York Municipal Income Trust [File No. 811-09145]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 25, 2021, and December 31, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$205,679 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on February 22, 2022.

*Applicant's Address:* *jbeksha@eatonvance.com*.

**Guggenheim Credit Allocation Fund [File No. 811-22715]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Guggenheim Strategic Opportunities Fund, and on October 25, 2021 made a final distribution to its shareholders based on net asset value. Expenses of \$1,115,991.21 incurred in connection with the reorganization were paid by the applicant's investment adviser and sub-adviser.

*Filing Dates:* The application was filed on December 10, 2021, and amended on March 21, 2022.

*Applicant's Address:* *julien.bourgeois@dechert.com*.

**Guggenheim Enhanced Equity Income Fund [File No. 811-21681]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Guggenheim Strategic Opportunities Fund, and on October 25, 2021 made a final distribution to its shareholders based on net asset value. Expenses of \$1,115,991.21 incurred in connection with the reorganization were paid by the applicant's investment adviser.

*Filing Dates:* The application was filed on December 10, 2021, and amended on March 21, 2022.

*Applicant's Address:* *julien.bourgeois@dechert.com*.

**Legg Mason Investment Trust [File No. 811-22670]**

*Summary:* Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Trust for

Advised Portfolios, and on February 24, 2017 made a final distribution to its shareholders based on net asset value. Expenses of \$640,950 incurred in connection with the reorganization were paid by the applicant's investment adviser or its affiliates.

*Filing Date:* The application was filed on February 24, 2022.

*Applicant's Address:* *barry.hurwitz@morganlewis.com*.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-94527; File No. SR-CboeEDGX-2022-017]

**Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons and Move Those Rules From Interpretation and Policy .02 of Rule 2.5 to Proposed Rule 2.16 and To Amend Related Registration Requirements Provided Under Various Interpretations and Policies of Rule 2.5**

March 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 15, 2022, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 rules relating to the Continuing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Education for Registered Persons and move those rules from Interpretation and Policy .02 of Rule 2.5 to proposed Rule 2.16 and to amend related registration requirements provided under various Interpretations and Policies of Rule 2.5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

##### (i) Existing CE Program Background

The continuing education program for registered persons of broker-dealers ("CE Program") generally requires registered persons to complete continuing education consisting of a Regulatory Element. The Regulatory Element is delivered through a web-based delivery method called "CE Online," which is administered through the Financial Industry Regulatory Authority, Inc. ("FINRA") online continuing education system, and focuses on regulatory requirements and industry standards. The CE Program for registered persons is currently codified under Interpretation and Policy .02 of Exchange Rule 2.5. The Exchange now proposes to expand the CE Program to adopt rules pertaining to a Firm Element component of continuing education. The Firm Element would be provided by each firm and focus on securities products, services and strategies the firm offers, firm policies and industry trends. In addition, the Exchange proposes other changes to amend, move, reorganize and enhance its rules

regarding its CE Program, as described below.

The Commission recently approved a proposal submitted by FINRA relating to its CE Program.<sup>5</sup> The Exchange understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under proposed Rule 2.16 and its related registration requirements as provided under various Interpretations and Policies of Rule 2.5 in response to FINRA's amended CE Program and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA's CE Program implementation dates.<sup>6</sup> Specifically, the proposed implementation dates are as follows: Changes relating to proposed Rule 2.16(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes to recognize waiver of examination programs for individuals working for a financial services industry affiliate of a member that are administered by the Exchange's affiliates, Cboe Exchange, Inc. ("Cboe") and Cboe C2 Exchange, Inc. ("C2"), and by FINRA (referred to as the "FSA waiver programs" or "FSAWPs") will become effective March 15, 2022; and all other changes, including changes reflected in proposed Rules 2.16(a) (Regulatory Element)<sup>7</sup> and 2.16(b) (Firm Element) will become effective January 1, 2023.

##### a. Regulatory Element

Interpretation and Policy .02(a) of Rule 2.5 currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.<sup>8</sup> The

<sup>5</sup> See Securities and Exchange Act No. 93097 (September 21, 2021) 86 FR 53358 (September 27, 2021) (SR-FINRA-2021-015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

<sup>6</sup> See FINRA Regulatory Notice 21-41 (November 17, 2021).

<sup>7</sup> An individual's initial annual Regulatory Element due date will be December 31, 2023.

<sup>8</sup> See Rule 2.5.02(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository ("CRD®") system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by

Exchange may extend these time frames for good cause shown.<sup>9</sup> Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as "CE inactive" in the CRD system until the requirements of the Regulatory Element have been satisfied.<sup>10</sup> A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).<sup>11</sup>

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.<sup>12</sup> While some of the current Regulatory Element content is unique to particular registration categories, most of the

examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under proposed Rule 2.5.07 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) ("FSAWP participants") are also subject to the Regulatory Element. See also proposed Rule 2.16(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in proposed Rule 2.16(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

<sup>9</sup> See Rule 2.5.02(b).

<sup>10</sup> *Supra* note 8. Individuals must complete the entire Regulatory Element session to be considered to have "completed" the Regulatory Element; partial completion is the same as non-completion.

<sup>11</sup> See Rule 2.5.02(b). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a Member without having to requalify by examination or having to obtain an examination waiver.

<sup>12</sup> The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).



content has broad application to both representatives and principals.<sup>13</sup> The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

#### b. Firm Element

As noted above, Exchange Rules do not currently provide for a Firm Element of the CE Program. However, as discussed in more detail further below, the Exchange is now proposing to introduce a Firm Element, which would be modeled after FINRA Rule 1240 and Cboe Rule 3.33(c).

#### c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the “two-year qualification period”).<sup>14</sup> The

<sup>13</sup> The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

<sup>14</sup> See Rule 2.5.02(d). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (“SIE”) examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 8.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to

two-year qualification period was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

#### (ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (“CE Council”), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes to the Exchange’s CE Program under Rule 2.5 and proposed Rule 2.16 to align with FINRA Rule 1240 and Cboe Rule 3.33.

##### a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.<sup>15</sup> Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes adopting Rule 2.16(a) to require registered persons to complete the Regulatory Element annually by December 31.<sup>16</sup> The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.<sup>17</sup>

Under the proposed rule change, Members would have the flexibility to require their registered persons to

satisfying the eligibility conditions for association with a firm. Waivers are granted on a case-by-case basis under Rule 2.5.01(b).

<sup>15</sup> When other self-regulatory organizations’ CE Programs were originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. See Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR-AMEX-94-59; SR-CBOE-94-49; SR-CHX-94-27; SR-MSRB-94-17; SR-NASD-94-72; SR-NYSE-94-43; SR-PSE-94-35; and SR-PHLX-94-52). The change to the current three-year cycle in the other self-regulatory organizations’ CE Programs was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33).

<sup>16</sup> See proposed Rules 2.16(a)(1) and (a)(4).

<sup>17</sup> See proposed Rules 2.5.04 and 2.16(a)(1).

complete the Regulatory Element sooner than December 31, which would allow Members to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.<sup>18</sup> For example, a Member could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.<sup>19</sup> In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.<sup>20</sup>

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.<sup>21</sup> However, the proposed rule change preserves the Exchange’s ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.<sup>22</sup>

The Exchange also proposes adopting Rule 2.16(a) to provide that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;<sup>23</sup> (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;<sup>24</sup> (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;<sup>25</sup> (4) individuals who have not completed any Regulatory Element content for a

<sup>18</sup> See proposed Rules 2.16(a)(1) and (a)(4).

<sup>19</sup> See proposed Rule 2.16(a)(1).

<sup>20</sup> See proposed Rule 2.16(a)(4).

<sup>21</sup> See proposed Rule 2.16(a)(2).

<sup>22</sup> *Id.* The proposed rule change provides that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;<sup>26</sup> and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.<sup>27</sup>

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

**b. Adoption of Firm Element, Recognition of Other Training Requirements for Firm Element, and Application of Firm Element to Covered Registered Persons**

The Exchange proposes to adopt proposed Rule 2.16(b) to include a Firm Element component for its CE Program that aligns with Cboe Rule 3.33(b) and FINRA Rule 1240(b). The proposed rule would require Members to maintain a continuing and current education program for its registered persons to enhance their securities knowledge,

skills and professionalism. At a minimum, each Member would be required to at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the Member's training plan. The proposed rule would also require that programs used to implement a Member's training plan must be appropriate for the business of the Member and, at a minimum, must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility. In addition, the proposed rule would provide that each Member must administer its continuing education Firm Element program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

To align the Firm Element requirement with other required training, proposed Rule 2.16(b) would also expressly allow Members to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.<sup>28</sup> The Exchange also proposes to apply the Firm Element requirement to "covered registered persons," which would include any person registered with a Member, including person who is permissively registered as a representative or principle pursuant to proposed Rule 2.5.08, as discussed below, thereby aligning the description of "covered registered persons" in the Firm Element requirement with the description of "covered persons" in the Regulatory Element requirement.<sup>29</sup>

**c. Maintenance of Qualification After Termination of Registration**

The Exchange proposes to adopt Rules 2.16(c), 2.16.01, and 2.16.02 to provide eligible individuals who

terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;<sup>30</sup>
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;<sup>31</sup>
- individuals would be required to complete annually all prescribed continuing education;<sup>32</sup>
- individuals would have a maximum of five years in which to reregister;<sup>33</sup>
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;<sup>34</sup> and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.<sup>35</sup>

<sup>30</sup> See proposed Rule 2.16(c)(1).

<sup>31</sup> See proposed Rule 2.16(c)(2).

<sup>32</sup> See proposed Rule 2.16(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

<sup>33</sup> See proposed Rule 2.16(c).

<sup>34</sup> See proposed Rule 2.16(c)(4) and (c)(5).

<sup>35</sup> See proposed Rules 2.16(c)(1) and (c)(6). Individuals who are subject to a statutory

<sup>26</sup> See proposed Rule 3.33(a)(4).

<sup>27</sup> See proposed Rule 3.33(a)(5).

<sup>28</sup> See proposed Rule 2.16(b)(2)(D).

<sup>29</sup> The group of persons who may be considered a "covered registered person" under the Firm Element provisions in proposed Rule 2.16(b)(1) is a subset of the group of persons who may be considered a "covered person" under the Regulatory Element provisions in proposed Rule 2.15(a)(5).

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the March 15, 2022 implementation date of the proposed rule change; and (ii) individuals who have been FSWAP participants immediately prior to the March 15, 2022 implementation date of the proposed rule change.<sup>36</sup> With respect to the FSAWP, the Exchange itself does not have an FSW waiver program. However, the Exchange proposes to recognize waivers granted to individuals who are designated as participants in, and satisfying the conditions of, the FSW waiver program(s) of Cboe, C2 and/or FINRA, and also to make the look-back provision for the new maintaining qualifications requirements available to individuals who are participants in the FSA waiver programs of Cboe, C2 and/or FINRA immediately preceding March 15, 2022. The Exchange understands that, effective March 15, 2022, Cboe, C2 and FINRA do not plan to accept any new initial designations for individuals

disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with a Member. See also Exchange Act Sections 3(a)(39) and 15(b)(4).

<sup>36</sup> See proposed Rule 2.16.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (*i.e.*, the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

under their respective FSA waiver programs. Thus, what will remain of those programs will only be applicable to pre-existing participants. The Exchange also understands that, ultimately, the FSA waiver programs will expire in favor of the maintenance of qualification requirements under the Cboe, C2 and FINRA Rules, for which the Exchange's maintenance of qualification requirements under proposed are modeled.<sup>37</sup>

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a Member for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.<sup>38</sup> The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.<sup>39</sup> In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.<sup>40</sup>

<sup>37</sup> See proposed Rules 2.5.07 and 2.16.01.

<sup>38</sup> See proposed Rule 2.16.02.

<sup>39</sup> See *The Female Face of Family Caregiving* (November 2018), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf>.

<sup>40</sup> See *The COVID-19 Recession is the Most Unequal in Modern U.S. History* (September 30, 2020), available at <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/> and *Unemployment's Toll on Older Workers Is Worst in Half a Century* (October 21, 2020), available at <https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/>.

#### d. Other Changes to Exchange Rule 2.5

The Exchange proposes to adopt Rules 2.5.05 through 2.5.07 to conform to Cboe Rules 3.30.07 through 3.30.09, respectively, and to adopt Rule 2.5.08 to conform to Cboe Rule 3.30.02. Further, based on the Exchange's proposal to move the subject matter of current Rule 2.5.02 to proposed Rule 2.16, the Exchange also proposes to renumber various Interpretations and Policies under Rule 2.5 accordingly. The Exchange proposes to adopt Rule 2.5.05 to provide that all registered representatives and principals must satisfy the regulatory element of continuing education. Specifically, proposed Rule 2.5.05 provides that all registered representatives and principals, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 2.5.08 shall satisfy the Regulatory Element of continuing education for each representative or principal registration category that they hold as specified in Rule 2.5.01(i). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under proposed Rule 2.16, such person shall not be permitted to be registered in another registration category under Rule 2.5.01(i) with that Member or to be registered in any registration category under Rule 2.5.01(i), with another Member, until the person has satisfied the deficiency.

The Exchange also proposes to adopt Rule 2.5.06 to address lapses of registrations and expirations of the SIE. Specifically, proposed Rule 2.5.06 would provide that any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. In addition, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration as

specified in Rule 2.5.01(i). Any person who was last registered in a principal registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for the registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. Any person whose registration has been revoked and any person who has a continuing education deficiency for a period of two years as provided under Rule 2.5.01(i) shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i), to be eligible for registration with the Exchange. Finally, for purposes of Rule 2.5.06, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

The Exchange proposes to adopt Rule 2.5.07 which, as discussed above, would recognize a waiver for participants in the financial services industry affiliate waiver program(s) of Cboe, C2 and/or FINRA. Specifically, Rule 2.5.07 would provide that upon request by a Member, the Exchange shall waive the applicable qualification examination(s) for an individual designated as a participant in, and satisfying the conditions of, the FSA waiver program(s) of Cboe under its Rule 3.30.09, C2 under its Chapter 3, Section B, and/or FINRA under its Rule 2110.09.

By way of background, very generally, these FSA waiver programs provide that a member of Cboe, C2 or FINRA, respectively, may request that the exchange/FINRA waive the applicable qualification examination(s) for an individual designated with it as working for a financial services industry affiliate of a member if the following conditions are met:

- Prior to the individual's initial designation, the individual was registered as a representative or principal with Cboe, C2 or FINRA, as applicable, for a total of five years within the most recent 10 year period, including for the most recent year with the member that initially designated the individual;
- The waiver request is made within seven years of the individual's initial designation;
- The initial designation and any subsequent designation(s) were made

concurrently with the filing of the individual's related Form U5;

- The individual continuously worked for the financial services industry affiliate(s) of a member since the individual's last Form U5 filing;
- The individual has complied with the Regulatory Element of continuing education as specified in the Cboe, C2 or FINRA Rules, as applicable; and
- The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

As used in Rule 2.5.07, a "financial services industry affiliate" is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Last, the Exchange proposes to adopt Rule 2.5.08, which would provide for permissive registrations. Specifically, proposed Rule 2.5.08 would provide that a Member may make application for or maintain the registration as a representative or principal of any associated person of a Member and any individual engaged in the securities business of a foreign securities affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities.

Consistent with the requirements of the Exchange's supervision rules, Members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with the Exchange's supervision rules, a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is

permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>41</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>42</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>43</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,<sup>44</sup> the Commission found that "the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations."

The Exchange believes that the proposed changes to the Regulatory Element and the proposal to adopt the Firm Element portions of its CE Program will ensure that all registered persons

<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* note 5.

receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with Cboe's and FINRA's recently amended CE Program rules, which will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes conform certain of the Exchange's continuing education and registration rules to align them with rules of Cboe, which will, in turn, prevent unnecessary regulatory burdens and to promote efficient administration of the rules. Finally, the proposed amendment also makes minor updates and corrections to the Exchange's rules which improve readability.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA and Cboe, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>45</sup> and Rule 19b-4(f)(6) thereunder.<sup>46</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b-4(f)(6)(iii)<sup>47</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>48</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2022-017 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-CboeEDGX-2022-017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2022-017 and

<sup>45</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>46</sup> 17 CFR 240.19b-4(f)(6).

<sup>47</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>48</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

should be submitted on or before April 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94520; File No. SR-CboeBYX-2022-009]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

March 25, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 23, 2022, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Market Data section applicable to its equities trading platform (“BYX Equities”). Particularly, the Exchange proposes to (i) decrease the External Distribution fee applicable to BYX Top, (ii) adopt a New External Distributor Credit applicable to Cboe One Premium, and (iii) extend the New External Distributor Credit applicable to BYX Summary Depth Feed from one (1) month to three (3) months.<sup>3</sup>

##### Market Background

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.”<sup>4</sup> As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>5</sup>

Equity trading is currently dispersed across sixteen exchanges, more than 50 alternative trading systems,<sup>6</sup> and

<sup>3</sup> The Exchange initially filed the proposed fee changes on January 3, 2022 (SR-CboeBYX-2022-001). On March 2, 2022 the Exchange withdrew that filing and refiled (SR-Cboe-BYX-2022-003). On March 15, 2022, the Exchange withdrew that filing and refiled (SR-Cboe-BYX-2022-005). On March 16, 2022 the Exchange withdrew that and refiled (SR-BYX-2022-007). On March 23, 2022, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS Adopting Release”).

<sup>5</sup> See Securities Exchange Act Release No. 84875, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

<sup>6</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsData>. A list of alternative trading systems

numerous broker-dealer internalizers and wholesalers, all competing fiercely for order flow. Based on publicly-available information, no single U.S. equities exchange has more than 17% market share.<sup>7</sup> In turn, the market for top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. In fact, there are twelve competing products offered by other national securities exchanges today,<sup>8</sup> not counting products offered by the Exchange’s affiliates, and each of the Exchange’s affiliated U.S. equities exchanges also offers similar top-of-book data. Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BYX Top Feed.<sup>9</sup> Exchange top-of-book data is therefore widely available today from a number of different sources.

#### Fees for External Distribution of BYX Top

The Exchange first proposes to decrease the external distribution fee applicable to BYX Top,<sup>10</sup> which is an uncompressed data feed that offers top-of-book quotations and execution information based on equity orders entered into the System.<sup>11</sup> Currently, the Exchange charges an external distribution fee (*i.e.*, distribution outside the distributor’s own firm) of

registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>7</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 10, 2021) available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>8</sup> Competing top-of-book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

<sup>9</sup> For example, The Nasdaq Stock Market LLC (“Nasdaq”) offers “Nasdaq Basic” which is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facility (“Nasdaq TRF”). See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(a). The type of information contained on the BYX Top Feed is substantially similar to that offered through Nasdaq Basic, except that the Exchange disseminates information about quotes and trades on BYX, whereas Nasdaq Basic provides information about quotes and trades on Nasdaq and the Nasdaq TRF. Other national securities with competing top-of-book products also offer substantially similar types of information through those top-of-book products.

<sup>10</sup> See Exchange Rule 11.22(d).

<sup>11</sup> See Exchange Rule 1.5(aa).

<sup>49</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

\$1,000 per month to External Distributors<sup>12</sup> of BYX Top. The Exchange also charges a professional user fee of \$1.00 per month, a non-professional user fee of \$0.025 per month, an enterprise fee of \$10,000 per month,<sup>13</sup> and a digital media enterprise fee<sup>14</sup> of \$2,500 per month that is applicable to External Distributors. The external distribution fees have been in place, without change, since June 1, 2016.<sup>15</sup> Nonetheless, the Exchange proposes to decrease the monthly charge for external distribution of BYX Top from \$1,000 to \$250 per month (*i.e.*, a decrease of \$750 per month),<sup>16</sup> which would continue to be cheaper than similar products offered by certain of the Exchange's competitors.<sup>17</sup> The Exchange proposes no changes to the professional, non-professional, enterprise and digital media enterprise fees associated with external distribution.

#### Cboe One Premium and BYX Top Depth New External Distributor Credit

The Exchange next proposes to adopt a New External Distributor Credit applicable to Cboe One Premium and extend the New External Distributor Credit applicable to BYX Summary Depth Feed from one (1) month to three (3) months. By way of background, Cboe One Premium is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of

all displayed orders for securities traded on BYX and its affiliated exchanges (*i.e.*, EDGX, Cboe EDGA Exchange, Inc. ("EDGA"), and Cboe BZX Exchange, Inc. ("BZX")) and contains optional functionality which enables recipients to receive aggregated two-sided quotations from BYX and its affiliated equities exchanges for up to five (5) price levels.<sup>18</sup> Currently, the Exchange charges an external distribution fee of \$12,500 per month to External Distributors of Cboe One Premium. The Exchange now proposes to adopt a New External Distributor Credit which provide that new External Distributors of the Cboe One Premium Feed will not be charged an External Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Cboe One Premium Feed. The Exchange believes the proposal will incentivize External Distributors to enlist new users to receive Cboe One Premium. To ensure consistency across the Cboe Equity Exchanges, BZX, EDGX, and EDGA will be filing companion proposals to reflect this proposal in their respective fee schedules.

The Exchange notes that it offers similar credits for other market data products. For example, the Exchange currently offers a one (1) month New External Distributor Credit applicable to Cboe One Summary,<sup>19</sup> which is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on BYX and its affiliated equities exchanges and also contains individual last sale information for the BYX and its affiliated equities exchanges.<sup>20</sup> It also offers a New External Distributor Credit of one (1) month for subscribers of BYX Summary Depth, which is a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System for up to five (5) price levels. BYX Summary Depth also contains the individual last sale information, Market

Status, Trading Status, and Trade Break messages.<sup>21</sup> The External Distribution fees for Cboe One Premium is equivalent to the aggregate BYX Summary Depth, BZX Summary Depth, EDGX Summary Depth, and EDGA Summary Depth External Distribution fees. In order to alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Premium Feed based on the underlying data feeds, the Exchange proposes to also extend the current New External Distributor Credit for BYX Summary Depth from one (1) month to three (3) months and the Exchange's affiliates EDGX, BZX and EDGA are also submitting similar proposals to increase the length of their respective Summary Depth New External Distributor Credits from one (1) month to three (3) months. The respective proposals to extend these credits to three months ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>23</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.<sup>24</sup> Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,<sup>25</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange operates in a highly competitive environment. Indeed, there

<sup>12</sup> An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

<sup>13</sup> As an alternative to User fees, a recipient firm may purchase a monthly Enterprise license to receive BYX Top from an External Distributor for distribution to an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BYX Top if it wishes such User to be covered by the Enterprise Fee.

<sup>14</sup> As an alternative to User fees, a recipient firm may purchase a monthly Digital Media Enterprise license to receive BYX Top from an External Distributor for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only.

<sup>15</sup> See Securities Exchange Act Release No. 77886 (May 23, 2016) 81 FR 33722 (May 27, 2016) (SR-BatsBYX-2016-08).

<sup>16</sup> The Exchange notes that the fee for Cboe One Summary is equivalent to the aggregate BYX Top, BZX, Top, EDGX Top, and EDGA Top fees. The Exchange is not proposing to change the current Cboe One Summary external distribution fee. Instead, the Cboe EDGX Exchange, Inc. ("EDGX") has simultaneously with this proposal proposed to increase its fee for EDGX Top by \$750 in order to ensure the proposed fee will continue to not cause the combined cost of subscribing to BYX, EDGA, EDGX, and BZX individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Cboe One Summary fee.

<sup>17</sup> See *infra* notes 32, 33, 34, and 35.

<sup>18</sup> The Cboe Aggregated Market ("Cboe One") Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges (*i.e.*, EDGX, EDGA, and BZX). See Exchange Rule 11.22(i). The Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equities Exchanges for up to five (5) price levels ("Cboe One Premium Feed"). The Cboe One Premium external distribution fee is equal to the aggregate BYX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and BZX Summary Depth external distribution fees.

<sup>19</sup> See Exchange Rule 11.22(i).

<sup>20</sup> The Exchange notes that when it first adopted the New External Distributor Credit for Cboe One Summary, it similarly applied for a new External Distributor's first three (3) months. See Securities Exchange Act Release No. 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09).

<sup>21</sup> See Exchange Rule 11.22(k).

<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(4).

<sup>24</sup> 15 U.S.C. 78k-1.

<sup>25</sup> See 17 CFR 242.603.

are now sixteen registered U.S. equities exchanges, and with the exception of Long-Term Stock Exchange, Inc. (“LTSE”), which has determined to not offer any proprietary market data feeds, each of these exchanges offer associated market data products to their customers, either with or without a fee. It is in this robust and competitive market in which the Exchange is proposing to increase its fees, while still providing its data at a significantly lower price than competing products offered by other national securities exchanges with similar data quality.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, with respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data: “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”<sup>26</sup> The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”<sup>27</sup> As discussed in this filing, significant competitive forces constrain the ability of the Exchange to charge supra-competitive fees.

#### BYX Top

##### i. The BYX Top Feed Is an Optional Market Data Product, and the Exchange Is Constrained in Its Pricing by Significant Competitive Forces

Subscribing to BYX Top is entirely optional. The Exchange is not required to make BYX Top available to any customers, nor is any customer required to purchase BYX Top.<sup>28</sup> A customer’s

decision as to whether to purchase BYX Top is therefore entirely discretionary and is based on that firm’s individual business needs. Generally, firms that choose to subscribe to BYX Top do so because they believe that it is a cost-effective source for top-of-book data that provides valuable information about the market for national market system (“NMS”) stocks traded on the Exchange, where a consolidated display covering all U.S. equities exchanges is not required. Such firms are able to determine for themselves whether BYX Top helps them to achieve their business goals, and if so, whether or not it is attractively priced compared to other similar top-of-book products offered by competing exchanges. Indeed, if BYX Top does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use BYX Top. And, as discussed later in this filing, any External Distributor of top-of-book data that does not wish to purchase BYX Top, due to the price of that data or for any other reason, can choose to substitute similar information from other exchanges. Although the Exchange is not required to make any data, including top-of-book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. For example, a broker or fintech firm may choose to purchase BYX Top, or a similar product from another exchange, in order to perform investment analysis, or to provide general information about the market for U.S. equity securities, respectively. In either case the choice to purchase BYX Top would be based on the firm’s determination of the value of the data offered by their chosen product compared to the cost of acquiring this data instead of receiving similar data from other sources. BYX Top serves as a valuable reference for investors that do not require a consolidated display. Making alternative products available to market participants ultimately ensures competition in the marketplace, and

constrains the ability of exchanges to charge supra-competitive fees. Further, in the event that a market data customer views one exchange’s top-of-book data product and/or fees as more or less attractive than a competitor’s offerings they can and often do switch between competing products. As discussed, similar top-of-book information is available from a number of competing U.S. equities exchanges.<sup>29</sup> This includes a number of large established exchanges that charge for access to such top-of-book data, as well as certain smaller or new exchange entrants that provide similar data without charge, in many cases as a way of attracting customers to their exchange while they seek to grow market share. In this way, BYX Top and other top-of-book products offered by a number of U.S. equities exchanges, are all substitutes. The availability of these substitute products constrains the Exchange’s ability to charge supra-competitive prices as market participants can easily obtain similar data from one of the Exchange’s many competitors. Other exchanges have similarly filed to reduce the prices of their top-of-book data in order to compete with products offered by the Exchange and other competing exchanges.<sup>30</sup> In fact, the impact of competition on the market in which BYX Top is offered to market participants and investors is showcased by the Exchange’s other recent fee changes related to this product, which involved the reduction of fees to facilitate the Exchange’s ability to compete for customers.<sup>31</sup>

Distributors can discontinue use of BYX Top at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Other External Distributors are free to similarly cancel their subscriptions in favor of a competitor offering, or cheaper or free data offered by the Exchange’s affiliated U.S. equities exchanges, if they believe that the fees are too high given their particular use case for obtaining the data that the Exchange provides over BYX Top. The Exchange offers all of its proprietary market data products pursuant to a month-to-month contract that allows

<sup>26</sup> *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (“*NetCoalition I*”) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

<sup>27</sup> *Id.* at 535.

<sup>28</sup> The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of*

*Actions Taken by Self-Regulatory Organizations*, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSS have chosen not to do so.

<sup>29</sup> Although the Exchange does not have access to the customer lists for other competing products, it understands based on conversations with subscribers to BYX Top that they typically view exchange top-of-book products as substitutes and do not generally look to purchase such data from more than one national securities exchange.

<sup>30</sup> *See e.g.*, Securities Exchange Act Release No. 90616 (December 9, 2020), 85 FR 81237 (December 15, 2020) (SR–NASDAQ–2020–086).

<sup>31</sup> *See e.g.*, Securities Exchange Act Release No. 88221 (February 14, 2020), 85 FR 9904 (February 20, 2020) (SR–CboeBYX–2020–007).



subscribers to choose to terminate their subscription at any time. As a result, there are no contractual or other legal impediments for firms that wish to cancel their subscription to the Exchange's market data products, including BYX Top. In addition, the Exchange notes that a majority of External Distributors of BYX Top either receive this data through a market data vendor, as opposed to directly from the Exchange, or is a market data vendor itself. Thus, firms can seamlessly switch to any other competitor product offered by their chosen vendor without incurring additional switching costs, such as the cost of establishing connectivity to another exchange to receive its market data.<sup>32</sup>

In setting the proposed fees for BYX Top, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. Indeed, the Exchange is not in a position to charge unreasonable fees for its top-of-book data as there are a number of competing products in the market, including products that are currently offered free of charge by certain other exchanges that have determined not to charge for their market data. The existence of alternatives to BYX Top ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can freely elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

#### ii. The Proposed Fees Are Reasonable Given the Value of the Data Provided to Customers, and When Compared to Competing Market Data Products

The proposed fees are also reasonable they would represent a decreased fee for top-of-book data that has proven valuable for investors. BYX Top is a competitively-priced alternative to top-of-book data disseminated by other national securities exchanges. It is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, BYX Top benefits a wide range of investors

<sup>32</sup> Market data vendors typically establish connectivity to a number of national securities exchanges to be able to offer their market data to customers.

that participate in the national market system. As discussed, the decision to purchase a particular market data product from a particular exchange is largely based on two factors: (1) The quality of the data, and (2) the price charged for access to that data. The Exchange believes that BYX Top is competitive on both of these factors.

First, BYX Top would remain competitively priced compared to similar products offered by other comparable U.S. equities exchanges. Although BYX Top is not offered free of charge like certain other competitor offerings, particularly those offered by newer U.S. equities exchanges that are seeking to grow market share, it is made available at a price that is less than the prices charged by the Exchange's main competitors—*i.e.*, those with comparable market shares and data quality. Notably, BYX Top would remain significantly cheaper than similar products offered by New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("Arca") and Nasdaq in terms of the fees charged for external distribution. For example, NYSE charges a total of \$4,000 per month for access and redistribution of their equivalent products, *i.e.*, \$1,500 per month for applicable top-of-book quotation information,<sup>33</sup> and an additional \$1,500 per month for transaction information,<sup>34</sup> both of which are included in BYX Top for a single fee. In addition, a \$1,000 per month redistribution fee is applied by NYSE. Arca, which has a similar pricing model to NYSE, charges a rate of \$2,250 per month for access and redistribution of its equivalent products, separated into a \$750 per month charge for top-of-book quotation information, an additional \$750 per month charge for transaction information, and \$750 per month for redistribution.<sup>35</sup> Finally, Nasdaq charges its External Distributors a fee of \$2,000 per month for Nasdaq Basic, which includes both top-of-book quotation information and transaction information for the same fee, a \$350 per month Data Consolidation fee, and a \$100 per month Monthly Administrative Fee.<sup>36</sup> The external distribution charges associated with obtaining comparable U.S. equities

<sup>33</sup> See NYSE PDP Market Data Pricing, Section 1.3, NYSE BBO.

<sup>34</sup> See NYSE PDP Market Data Pricing, Section 1.4, NYSE Trades.

<sup>35</sup> See NYSE PDP Market Data Pricing, Section 3.3, NYSE Arca BBO; NYSE PDP Market Data Pricing, Section 3.4, NYSE Arca Trades.

<sup>36</sup> See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(c)(1). In addition, Nasdaq also charges distributors a \$100 monthly administrative fee. See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 135.

market data from NYSE, Arca and Nasdaq runs significantly more than the proposed fee to be charged by the Exchange, meaning that the Exchange would continue to be offering its data at a price that is attractive compared to the prices charged by its competitors.

#### iii. The Proposed Fees Are Equitable and Not Unfairly Discriminatory as External Distributors Will Be Subject to Uniform Pricing Based on Their Usage of the Data and Differences Between the Fees Charged for Internal and External Distribution Are Appropriate

The Exchange believes the proposed fees for external distribution of BYX Top will continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to BYX Top and distribute that data to external subscribers. As proposed, all External Distributors of BYX Top will continue to be subject to the same external distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all External Distributors would have access to BYX Top on the same equitable and non-discriminatory terms.

The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the BYX Top. Although the proposed distribution fee charged to External Distributors will be lower than the existing distribution fee charged to Internal Distributors,<sup>37</sup> External Distributors are subject to professional user fees, non-professional user fees, an enterprise fee, and a digital media enterprise fee to which Internal Distributors are not subject. Furthermore, the proposal is designed to incentivize External Distributors to subscribe to BYX Top.

#### New External Distributor Fee Credit

The Exchange also believes that adopting a New External Distributor Credit for Cboe One Premium is equitable and reasonable. As discussed above, a similar New External Distributor Fee Credit was initially adopted at the time the Exchange began to offer the Cboe One Summary to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to Cboe One Summary in an effort to broaden the

<sup>37</sup> An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.

product's distribution. Now the Exchange proposes to adopt a similar credit for Cboe One Premium subscribers for their first three (3) months to similarly incentivize new Distributors to enlist Users to subscribe to Cboe One Premium in an effort to broaden the product's distribution. While this incentive is not available to Internal Distributors of Cboe One Premium, the Exchange believes it is appropriate as Internal Distributors have no subscribers outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange believes extending the New External Distributor Credit for BYX Summary Depth from one (1) month to three (3) months is also equitable and reasonable, as it (along with simultaneous corresponding proposals by the Exchange's affiliates) ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these top-of-book data products is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. equities exchanges. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges without charge. Further, the Exchange's proposal to extend the New External Distributor Credit applicable to BYX Summary Depth from one (1) month to three (3) months and to adopt a new External Distributor credit for Cboe One Premium involves no change to the existing fees, but simply extends or offers a waiver. Other exchanges are free to adopt a similar waiver if they choose. In this competitive environment potential subscribers are free to choose

which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

*Intramarket Competition.* The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees and credit would apply to all External Distributors of BYX Top and Cboe One Premium, respectively, on an equal and non-discriminatory basis. The difference in fees for internal and external distribution of BYX Top are reasonably designed to incentivize External Distributors to subscribe to BYX Top. Further, the credit applicable to only External Distributors is appropriate as it incentivizes such External Distributors to enlist subscribers, whereas Internal Distributors have no subscribers outside their firm and because External Distributors are subject to additional fees (e.g., user fees greater than \$0 or enterprise and digital media enterprise fees). The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

*Intermarket Competition.* The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In setting the proposed fees for BYX Top, the Exchange is constrained by the availability of numerous substitute products offered by other national securities exchanges. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>38</sup> and paragraph (f) of Rule 19b-4<sup>39</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2022-009 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-CboeBYX-2022-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>39</sup> 17 CFR 240.19b-4(f).

Reference Room, 100 F Street NE Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–009 and should be submitted on or before April 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022–06754 Filed 3–30–22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94518; File No. SR–NYSEArca–2021–65]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

March 25, 2022.

#### I. Introduction

On July 19, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Sprott ESG Gold ETF (“Trust”) under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the *Federal Register* on July 30, 2021.<sup>3</sup> On September 2, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On October 27, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On January 19, 2022, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.<sup>9</sup> On February 25, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>10</sup> This Amendment No. 1, set forth in Item II below, replaces SR–NYSE Arca–2021–65 as originally filed and supersedes such filing in its entirety. The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### 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,

<sup>5</sup> See Securities Exchange Act Release No. 92867, 86 FR 50568 (September 9, 2021).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 93434, 86 FR 60516 (November 2, 2021).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 94003, 87 FR 3865 (January 25, 2022). The Commission designated March 27, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>10</sup> Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2021-65/srnysearca202165-20117903-270825.pdf>. Among other things, Amendment No. 1 to the proposed rule change provided greater detail with respect to characteristics of unallocated gold, Sprott ESG Approved Gold (as defined herein), and ESG Criteria (as defined herein), as well as valuation of the Trust’s (as defined herein) gold. Amendment No. 1 explained how Sprott ESG Approved Gold will be created for the Trust, as well as the process of the exchange or conversion of the types of gold held by the Trust, and how this occurs during creations and redemptions. Amendment No. 1 also represented that there is no separate market for Sprott ESG Approved Gold, there is no industry standard for ESG factors that apply to gold production, and the value of the gold held by the Trust, whether allocated Sprott ESG Approved Gold or unallocated gold, will be determined by the LBMA Gold Price PM (as defined herein). Amendment No. 1 made additional representations, including regarding the Information Bulletin. Finally, Amendment No. 1 provided clarifications and technical edits to the proposed rule change.

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.

#### 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 list and trade shares (“Shares”) of the Sprott ESG Gold ETF (the “Trust”), under NYSE Arca Rule 8.201–E.<sup>11</sup> Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade Commodity-Based Trust Shares pursuant to unlisted trading privileges (“UTP”).<sup>12</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,<sup>13</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>14</sup>

The Sponsor of the Trust is Sprott Asset Management LP, a Canadian limited partnership. The Bank of New York Mellon serves as the Trust’s administrator (the “Administrator”) and

<sup>11</sup> On February 11, 2021, the Trust submitted to the Commission its draft registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and on July 1, 2021, the Trust submitted to the Commission the most recent amendment to its draft registration statement (collectively, the “Registration Statement”). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,070,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Form S–1 Registration Statement on a confidential basis with the Commission. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

<sup>12</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>13</sup> 15 U.S.C. 80a–1.

<sup>14</sup> 17 U.S.C. 1.

<sup>40</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 92506 (July 26, 2021), 86 FR 41109.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

transfer agent (the “Transfer Agent”). The Delaware Trust Company is the trustee of the Trust (the “Trustee”).<sup>15</sup> The Royal Canadian Mint is the custodian of the Trust’s gold (the “Gold Custodian” or “Mint”) and also produces Sprott ESG Approved Gold (as defined below) in bar form for the Trust.<sup>16</sup> The Bank of New York Mellon will also serve as the Trust’s cash custodian (the “Cash Custodian”) pursuant to the terms of the agreement between the Trust and the Cash Custodian. In its capacity as cash custodian, the Cash Custodian will maintain a custodial account that holds cash for the benefit of the Trust for the purpose of payment of the Sponsor’s fee in cash or the other expenses of the Trust.

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2–E(j)(5) and 8.201–E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold MiniBAR Trust;<sup>17</sup> the GraniteShares Gold Trust;<sup>18</sup> the

Merk Gold Trust;<sup>19</sup> the APMEX Physical-1 oz. Gold Redeemable Trust;<sup>20</sup> and the Long Dollar Gold Trust.<sup>21</sup>

The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.<sup>22</sup>

#### Operation of the Trust<sup>23</sup>

The investment objective of the Trust will be for the Shares to reflect the performance of the price of gold, less the Trust’s expenses and liabilities through an investment in physical gold bullion that meets certain ESG criteria determined by the Sponsor and on a temporary basis in unallocated gold. The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust.

The Trust’s assets are expected to consist primarily of fully allocated unencumbered physical gold bullion held by the Mint on behalf of the Trust that meets certain environmental, social and governance (“ESG”) standards and criteria established by the Sponsor (“Sprott ESG Approved Gold”). As described below, the Trust will also hold unallocated gold on a temporary basis, particularly in connection with creations and redemptions. Such unallocated gold will not qualify as Sprott ESG Approved Gold. The Trust does not have a minimum amount of Sprott ESG Approved Gold that it is required to hold at any given time. Sprott ESG Approved Gold and unallocated gold are described in more detail below.

The Trust will not trade in gold futures, options or swap contracts on any futures exchange or over the counter (“OTC”). The Trust will not hold or trade in commodity futures contracts, “commodity interests”, or any other instruments regulated by the Commodity Exchange Act. The Trust’s Cash Custodian may hold cash temporarily received from the sale of

gold. The Trust’s assets will only consist of Sprott ESG Approved Gold, unallocated gold and cash.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold bullion that meets the ESG Criteria. Although the Shares are not the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market.

#### Sprott ESG Approved Gold

Sprott ESG Approved Gold will be produced by the Mint specifically for the Trust using raw material that meets the criteria discussed below. Sprott ESG Approved Gold, as defined for purposes of the Trust, is not available in the general marketplace, although others, including other funds, may use the term “ESG” for gold used for their purposes.

The term “Sprott ESG Approved Gold” refers to gold that is physically indistinguishable from other gold but that has been sourced and produced in a manner consistent with the ESG standards and criteria used by the Sponsor (the “ESG Criteria”), which are designed to provide investors with an enhanced level of ESG scrutiny along with disclosure of the provenance of the metal sourced, and include an evaluation of mining companies and mines.<sup>24</sup> Mining companies and mines that meet the ESG Criteria (“Sprott ESG Approved Mining Companies” and “Sprott ESG Approved Mines”, respectively) must also comply with the Mint Responsible Sourcing Requirements (as defined below). An overview of the Sponsor’s application of the ESG Criteria to mining companies and mines that can provide the material for Sprott ESG Approved Gold is provided below.

The application of the ESG Criteria involves multiple levels of analysis. While the Sponsor’s evaluation of mines and mining companies will include the objective factors discussed below, the Sponsor will also evaluate company reports and, where possible, interview key personnel to assess whether such a mining company or mine meets the ESG

<sup>24</sup> The ESG Criteria are anticipated to evolve over time at the discretion of the Sponsor. Also, one or more criterion may not be relevant with respect to all sources of gold that are eligible for investment. Factors that could be considered by the Sponsor in modifying the ESG Criteria include changes to current gold mining techniques or standards, evolving legal standards, the introduction of new standards or evaluation frameworks within the mining industry or the elimination of existing standards or frameworks that in the view of the Sponsor are relevant to the ESG assessment of a mining company or mine site.

<sup>15</sup> The Trustee is a fiduciary under the Trust Agreement and must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. However, the fiduciary duties, responsibilities and liabilities of the Trustee are limited by, and are only those specifically set forth in, the Trust Agreement. The Trust does not have a Board of Directors or persons acting in a similar capacity.

<sup>16</sup> The Mint operates pursuant to the Royal Canadian Mint Act (Canada) and is a Canadian Crown corporation. Crown corporations are corporations wholly-owned by the Government of Canada. The Mint is, for all its purposes, an agent of Her Majesty in right of Canada and, as such, its obligations generally constitute unconditional obligations of the Government of Canada. The Gold Custodian is responsible for safekeeping the gold owned by the Trust pursuant to gold storage and custody agreements. The Gold Custodian will store gold for the account of the Trust on an allocated basis in the Trust’s allocated account (the “Trust Allocated Account”), except where gold is temporarily held in an unallocated account on an unallocated basis in the Trust’s unallocated account (the “Trust Unallocated Account”). Unallocated gold is gold stored by or on behalf of the Mint on behalf of its customers consisting of gold that is not specifically designated as being held by a particular customer and will not qualify as Sprott ESG Approved Gold. The Mint will facilitate the transfer of gold in and out of the Trust through (i) accounts that Authorized Participants (as defined below) have established at a London Precious Metals Clearing Limited clearing bank and (ii) the Trust Unallocated Account and Trust Allocated Account it will maintain for the Trust. The Gold Custodian is responsible for allocating specific bars of gold to the Trust Allocated Account. The Gold Custodian will provide the Trust with regular reports detailing the gold transfers in and out of the Trust Unallocated Account with the Gold Custodian and identifying the gold bars held in the Trust Allocated Account. Unallocated gold held by the Trust consists of a pool of London Good Delivery gold bars.

<sup>17</sup> See Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR–NYSEArca–2018–55).

<sup>18</sup> See Securities Exchange Act Release No. 81077 (July 5, 2017), 82 FR 32024 (July 11, 2017) (SR–NYSEArca–2017–55).

<sup>19</sup> See Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

<sup>20</sup> See Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

<sup>21</sup> See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR–NYSEArca–2016–84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

<sup>22</sup> With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

<sup>23</sup> The description of the operation of the Trust, the Shares and the gold market contained herein are based, in part, on the Registration Statement. See note 11, *supra*.

Criteria, which will require the subjective judgment of the Sponsor. The selection of these factors and how they are applied will be based, at least to some degree, on the judgment of the Sponsor and may or may not be consistent with current or future standards used by others in the industry. The ESG Criteria are subject to change by the Sponsor in its sole discretion. Any such changes will be reflected on the Trust's website promptly after any change to the ESG Criteria, Sprott ESG Approved Mines or Sprott ESG Approved Mining Companies has been made.

The ESG Criteria are in addition to those used in the LBMA Responsible Sourcing Program, as detailed in the LBMA's Responsible Gold Guidance, and are designed to provide investors with an enhanced level of ESG scrutiny along with disclosure of the provenance of the metal sourced. The Mint currently requires that its refining customers, including mines, meet the requirements outlined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the LBMA Responsible Gold Guidance, the Mint's Responsible Metals Program and the Mint's Anti-Money Laundering and Anti-Terrorist Financing Program in compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (collectively, the "Mint Responsible Sourcing Requirements"). Only mines which the Mint determines meet and maintain the Mint Responsible Sourcing Requirements and with whom the Mint has a contractual refining relationship (each a "Mint Approved Mine", collectively the "Mint Approved Mines") will be eligible for consideration by the Sponsor as a provider of Sprott ESG Approved Gold. The Mint will cease refining gold from any Mint Approved Mine that no longer meets the Mint Responsible Sourcing Requirements, as determined by the Mint from time to time. The Mint Responsible Sourcing Requirements are subject to change by the Mint in its sole discretion.

The ESG factors are a component of the ESG Criteria and are used for the ESG assessment of mines and miners generally, and will encompass the following factors:

- Environmental Factors
    - Energy use and greenhouse gas emissions
    - Tailings and waste management
    - Conservation and water management
    - Mine site remediation
  - Social Factors
    - Worker safety and health
    - Community relations
    - Natural resource benefit to local communities
    - Child and forced labor
  - Governance Factors
    - Corporate governance
    - Workplace and gender diversity
    - Fair executive compensation
    - Corporate transparency and disclosures
- Mining companies that qualify for the LBMA's Responsible Sourcing Program and are Mint Approved Mines will then be subject to two levels of ESG screening by the Sponsor: At the overall company level and at the individual mine site level.

First, the Sponsor will evaluate a mining company that operates a Mint Approved Mine using ESG factors determined by the Sponsor (described above). This evaluation will use a number of tools, which include ratings from third-party research providers, such as Sustainalytics ESG Risk Ratings, along with sell-side equity research reports. With respect to corporate governance, the Sponsor will evaluate recommendations from proxy voting research providers, such as the Glass Lewis Proxy Review. The Sponsor will also use compliance with precious metals industry standards as an objective factor in its evaluation of such mining companies. Each such mining company with high ESG ratings and favorable recommendations from proxy voting research providers that complies with precious metals industry standards will be designated as a Sprott ESG Approved Mining Company. Second, the Sponsor will evaluate individual mine site locations of each Sprott ESG Approved Mining Company. Each mine location of a Sprott ESG Approved Mining Company will then be evaluated by the Sponsor as follows: (1) The performance of each mine against various indicators in the Mining Association of Canada's Towards Sustainable Mining standards; (2) using the ESG factors described above; and (3) whether such mine is in a heightened risk or conflict area.<sup>25</sup> Each mining location of that Sprott ESG Approved Mining Company that (a) the Sponsor

<sup>25</sup> Heightened risk or conflict areas include areas where:

- human rights abuses, forced or child labor, war crimes or genocide are prevalent;
- mines are involved in direct or indirect support to non-state actors that use arms without legal authority;
- mines transport gold or supplies along routes that involve payment of illegal taxes or extortions; and
- mines are involved in money laundering or terrorism financing.

determines to meet the Mining Association of Canada's Towards Sustainable Mining standards and the ESG factors, and (b) is not in a heightened risk or conflict area will be designated as a Sprott ESG Approved Mine. Only Sprott ESG Approved Mines will be permitted to supply the raw material for Sprott ESG Approved Gold to the Mint, which will then refine the raw material to create Sprott ESG Approved Gold for the Trust. This means that the provenance of Sprott ESG Approved Gold will be known to the Trust. Notwithstanding its special provenance, there is no separate market for gold from Sprott ESG Approved Mines.

Based on its analysis of certain existing mines and taking into consideration the amount of physical gold bullion held by existing gold bullion ETFs, the Sponsor believes that a sufficient amount of raw material to create Sprott ESG Approved Gold for the Trust exists and will exist in the future.<sup>26</sup>

The Sponsor's fee, which will be paid for by the Trust, and thus the shareholders, will include any costs associated with researching, establishing and maintaining the ESG Criteria, assessing mining companies and mines against certain of the ESG Criteria and the diligence of the Trust's Sprott ESG Approved Gold holdings. The Sponsor will conduct research on each mining company using its in-house investment professionals and may use the services of outside consultants.

#### Unallocated Gold

The Trust's assets will also include unallocated unencumbered physical gold bullion stored by the Mint on behalf of the Trust and cash. Unallocated gold is gold stored by or on behalf of the Mint in a pool on behalf of its customers; gold in that pool is not specifically designated as being held by a particular customer and shall mean, for purposes of this proposal, any gold

<sup>26</sup> Current output from North American mines that the Sponsor estimates would likely meet the definition of Sprott ESG Approved Mines (based on currently available public information) is between \$12 and \$15 billion per year. If the Sprott ESG Approved Gold held by the Trust would increase in any given year by approximately 25% of that estimated output, the Mint has represented that it would have the operational capacity to refine such amount of Sprott ESG Approved Gold. If the Trust's increase would exceed that amount, the Trust would have to locate additional refiners, either in North America (for doré mined in North America) or elsewhere (for doré mined outside of North America); based on its experience in the gold industry, the Sponsor does not expect any difficulties with engaging such additional refiners in a timely manner.

that does not qualify as Sprott ESG Approved Gold.

While there is no minimum amount of Sprott ESG Approved Gold that the Trust will hold, the Sponsor expects to exchange the Trust's holdings of unallocated physical gold into Sprott ESG Approved Gold as soon as reasonably practicable, to the extent that unallocated physical gold is not needed under the circumstances described below.<sup>27</sup>

From time-to-time, on a temporary basis the Trust will hold unallocated physical gold bullion under the following circumstances: (1) In connection with transfers of gold to settle creations and redemptions of Creation Units (as defined below);<sup>28</sup> (2) until additional Sprott ESG Approved Gold can be produced by the Mint; (3) to the extent that the Trust holds gold in an amount less than a whole bar; and (4) in connection with payment of expenses of the Trust. Although the Trust intends to instruct the Mint to exchange unallocated physical gold bullion to Sprott ESG Approved Gold as soon as reasonably practicable, there is no limit on the amount of unallocated physical gold bullion that the Trust can hold. The Mint's ability to exchange unallocated physical gold bullion into Sprott ESG Approved Gold depends on various factors, including the size of the Trust's unallocated physical gold bullion holdings, the Trust's need for unallocated physical gold bullion to meet redemption requests, the availability of raw material for the Mint to produce additional Sprott ESG Approved Gold, the Mint's production capacity and certain minimum size requirements.

The Trust does not intend to hold a certain amount and maintains no minimum amount of gold in unallocated form to satisfy redemption requests or to pay expenses. Because the Trust has to pay the Sponsor's fee on a monthly basis and may receive a redemption request on any given business day (days other than a Saturday, Sunday or holiday) ("Business Day"), the Trust expects to hold some amount of unallocated gold at any given point in time. The Trust's holdings of unallocated gold may be a significant percentage of the Trust's assets if, for example, the Trust has received more

requests for creations than redemptions or the Trust's unallocated gold holdings are not sufficient to meet certain minimum size requirements to exchange unallocated gold to Sprott ESG Approved Gold at the Mint. There may be other times when the Trust's holdings of unallocated gold are a significant percentage of the Trust's assets, and there is no maximum percentage of the Trust's assets that may consist of unallocated gold. The Trust may need to instruct the Mint to exchange Sprott ESG Approved Gold into unallocated gold if insufficient unallocated gold is available to be sold to pay expenses or to meet redemption requests.<sup>29</sup>

#### There Is No Industry Standard for ESG Factors That Apply to Gold Production

There is no industry standard for ESG factors that apply to gold production. The ESG Criteria and the processes and methods for producing and using Sprott ESG Approved Gold for the Trust's operations have been developed by the Sponsor specifically for the Trust; specifically, the Mint will segregate the doré<sup>30</sup> received from Sprott ESG Approved Mines from doré originating from non-Sprott ESG Approved Mines, and will segregate Sprott ESG Approved Gold from gold produced from doré originating from non-Sprott ESG Approved Mines. Sprott ESG Approved Gold will be produced by the Mint in special runs that will ensure that no gold from non-Sprott ESG Approved Mines will be included in the bars of Sprott ESG Approved Gold. No such special runs will take place until the launch of the Trust; therefore, there have been no market transactions in Sprott ESG Approved Gold. The Trust is not aware of a separate market for Sprott ESG Approved Gold and does not believe that one will develop. Bars that consist of Sprott ESG Approved Gold are not marked in any special way, nor do such bars have any special physical characteristics (aside from consisting only of Sprott ESG Approved Gold) and they are indistinguishable from LBMA London Good Delivery. Once Sprott ESG Approved Gold bars leave the possession of the Trust, they will be treated as regular LBMA London Good Delivery gold. It is not possible for a market participant to purchase all the Sprott ESG Approved Gold bars in order

to affect the ability of the Trust to add Sprott ESG Approved Gold bars to its inventory, as the Trust relies on the Mint to refine and produce the Sprott ESG Approved Gold bars and does not rely on any bars that have left the possession of the Trust. Although there are additional costs associated with sourcing and producing Sprott ESG Approved Gold that will be included in the Sponsor's fee, the value of the Sprott ESG Approved Gold held by the Trust will be determined by utilizing the LBMA Gold Price PM (as defined below), which does not distinguish between gold that meets ESG Criteria and gold that does not.<sup>31</sup> The ESG Criteria used by the Sponsor to screen the sources for the Trust's Sprott ESG Approved Gold may or may not be consistent with current or future standards used by others in the industry.

#### How Sprott ESG Approved Gold Will Be Created for the Trust

In order to create Sprott ESG Approved Gold, the Mint will, upon request by the Trust, from time to time refine doré from Sprott ESG Approved Mines to produce bars of Sprott ESG Approved Gold. The doré used to create Sprott ESG Approved Gold is indistinguishable from doré already used by the Mint for gold production;<sup>32</sup> no separate market or marketplace exists for gold produced using such doré. Sprott ESG Approved Gold is the combination of sourcing of the doré and production of the gold by the Mint in special production runs.

In order to ensure that the Sprott ESG Approved Gold created by the Mint uses only doré from Sprott ESG Approved Mines, the Mint will create the Trust's Sprott ESG Approved Gold in special production runs, and will charge a special processing fee for that. This special processing fee, along with any additional costs associated with the enhanced sourcing requirements of Sprott ESG Approved Gold, including researching, establishing and maintaining the ESG Criteria, assessing mining companies and mines against certain of the ESG Criteria and the diligence of the Trust's Sprott ESG Approved Gold Holdings will be included in the Sponsor's fee.

#### Valuation of the Trust's Gold

"London Good Delivery" means gold bars that meet the standard measure of quality in gold bullion as set forth by

<sup>27</sup> See "Creation and Redemption of Shares" below, further discussing the exchange process from unallocated physical gold to Sprott ESG Approved Gold.

<sup>28</sup> Unallocated gold has been used for creation and redemption requests by gold ETFs and ETPs for many years and has become the main form of gold in which creation and redemption requests are settled.

<sup>29</sup> Because Authorized Participants (as defined below) expect redemption requests to be settled through the delivery of unallocated gold (as opposed to allocated gold which is in the form of physical bars), the Trust may at times need to exchange allocated for unallocated gold.

<sup>30</sup> The raw material created by mines that is used to refine gold is called "doré".

<sup>31</sup> See "How Sprott ESG Approved Gold Will Be Created for the Trust" and "Valuation of the Trust's Gold" below.

<sup>32</sup> The Mint uses doré from these mines to create Post-2012 LBMA Bars. See footnote 32 [sic], *infra*.

the London Bullion Market Association (“LBMA”). All London Good Delivery gold is priced equally; the only requirement is that it meets LBMA standards.”<sup>33</sup>

Sprott ESG Approved Gold meets the standards of London Good Delivery gold bars and the more stringent ESG Criteria developed by the Sponsor and shall be from Sprott ESG Approved Mines. As discussed below under “No Separate Market for Sprott ESG Approved Gold Exists”, no separate market for Sprott ESG Approved Gold exists and none is expected to develop. Because Sprott ESG Approved Gold is London Good Delivery gold and because no separate market for Sprott ESG Approved Gold exists, the Sponsor determined that its Sprott ESG Approved Gold should be valued, for purposes of determining the net asset value (“NAV”) of the Trust, as London Good Delivery gold.<sup>34</sup>

The value of the gold held by the Trust, whether allocated Sprott ESG Approved Gold or unallocated gold, will be determined by utilizing the p.m. price of gold expressed in U.S. dollars, as published by the LBMA (the “LBMA Gold Price PM”).<sup>35</sup> The LBMA Gold Price PM, which is used to value gold by many stakeholders in the securities industry,<sup>36</sup> applies to all forms of gold and does not distinguish between Sprott ESG Approved Gold and other gold.

#### Operation of the Gold Market

The global trade in gold consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

<sup>33</sup> For instance, LBMA changed its gold sourcing standards in 2012. Because gold is generally never destroyed once it is minted, today there are London Good Delivery gold bars available that were created before 2012 (using pre-2012 LBMA standards) (“Pre-2012 LBMA Bars”) and London Good Delivery gold bars that were created after the 2012 standards were implemented by the LBMA (“Post-2012 LBMA Bars”). When purchasing London Good Delivery gold bars, it is possible to selectively purchase Post-2012 LBMA Bars. Notwithstanding the differing sourcing standards, both Pre-2012 LBMA Bars and Post-2012 LBMA Bars are priced the same.

<sup>34</sup> The Trust reached that conclusion based on the fact that Pre-2012 LBMA Bars and Post-2012 LBMA Bars are valued the same. See footnote 32 [sic], *supra*.

<sup>35</sup> All references to LBMA Gold Price PM are used with the permission of Ice Benchmark Administration Limited and have been provided for information purposes only. Ice Benchmark Administration Limited accepts no liability or responsibility for the accuracy of the prices or the underlying product to which the prices may be referenced.

<sup>36</sup> The SPDR Gold Trust, the iShares Gold Trust, the Aberdeen Standard Physical Gold Shares ETF, the VanEck Merk Gold Trust and the GraniteShares Gold Trust, among others, each use the LBMA Gold Price PM.

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for settlement of any OTC transaction, will be acceptable for delivery to the Trust in connection with the issuance of Creation Units (defined below).

The most significant gold futures exchange in the U.S. is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the “CME Group”). Other commodity exchanges include the Tokyo Commodity Exchange (“TOCOM”), the Multi Commodity Exchange Of India (“MCX”), the Shanghai Futures Exchange, ICE Futures US (the “ICE”), and the Dubai Gold & Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group (“ISG”).

#### No Separate Market for Sprott ESG Approved Gold

As discussed in “Valuation of the Trust’s Gold” above, all London Good Delivery gold is deemed fungible by participants in the gold market and is valued the same. For example, Pre-2012 LBMA Bars and Post-2012 LBMA Bars are priced identically, even though the doré to create gold Post-2012 LBMA Bars is subject to different and generally more rigorous responsible gold sourcing guidelines than gold used to create Pre-2012 LBMA Bars.

In addition, there is no industry standard for ESG factors that apply to gold production and even if an industry standard for ESG factors that apply to gold production were to develop, it is likely that such industry standards would be different than the ESG Criteria. The ESG Criteria and the method for producing and using Sprott ESG Approved Gold for the Trust’s operations have been designed by the Sponsor specifically for the Trust, and the ESG Criteria are not used by anyone other than the Trust. The Mint will not conduct any special runs to produce Sprott ESG Approved Gold until the launch of the Trust; therefore, there have been no market transactions in Sprott ESG Approved Gold. The Trust is not aware of a separate market for Sprott

ESG Approved Gold and does not believe that one will develop, both because the ESG Criteria are unique to the Trust and the uniform pricing of London Good Delivery gold throughout the gold market, as shown by the example of Pre-2012 LBMA bars and Post-2012 LBMA bars.<sup>37</sup>

#### The London Gold Bullion Market

According to the Registration Statement, most trading in physical gold is conducted on the OTC market, predominantly in London. LBMA coordinates various OTC-market activities, including clearing and vaulting, acts as the principal intermediary between physical gold market participants and the relevant regulators, promotes good trading practices and develops standard market documentation. In addition, the LBMA promotes refining standards for the gold market by maintaining the “London Good Delivery List,” which identifies refiners of gold that have been approved by the LBMA. In the OTC market, gold bars that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA-acceptable refiner) and appearance described in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA are referred to as “London Good Delivery Bars.” A London Good Delivery Bar (typically called a “400 ounce bar”) must contain between 350 and 430 fine troy ounces of gold (1 troy ounce = 31.1034768 grams), with a minimum fineness (or purity) of 995 parts per 1000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the refiners identified on the London Good Delivery List.

Following the enactment of the Financial Markets Act 2012, the Prudential Regulation Authority of the Bank of England is responsible for regulating most of the financial firms that are active in the bullion market, and the Financial Conduct Authority is responsible for consumer and competition issues. Trading in spot, forwards and wholesale deposits in the bullion market is subject to the Non-

<sup>37</sup> See also “There Is No Industry Standard for ESG Factors That Apply to Gold Production,” *supra*, discussing how Sprott ESG Approved Gold bars and other London Good Delivery Bars will be indistinguishable from each other once Sprott ESG Approved Gold bars are no longer in the possession of the Trust.

Investment Products (“NIPS”) Code adopted by market participants.

#### Creation and Redemption of Shares

The Trust will create and redeem Shares on a continuous basis in one or more blocks of 25,000 Shares (a block of 25,000 Shares is called a “Creation Unit”). As described below, the Trust will issue Shares in Creation Units to certain authorized participants (“Authorized Participants”) on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company (“DTC”), must have entered into an agreement with the Administrator (the “Participant Agreement”), and must maintain an unallocated gold account with a London Precious Metals Clearing Limited clearing bank (the “London Gold Clearing Bank”). The creation or redemption of Creation Units is only made in exchange for LBMA unallocated gold delivered to the Trust by an Authorized Participant or from the Trust to an Authorized Participant. Unallocated gold delivered to the Trust in connection with the creation of Creation Baskets will be exchanged by the Mint into Sprott ESG Approved Gold as described in “Exchange of Unallocated Gold to Sprott ESG Approved Gold and Sprott ESG Approved Gold to Unallocated Gold” below; likewise, whenever there is a redemption of Creation Units, the Mint will exchange Sprott ESG Approved Gold into unallocated gold. All such conversions are on a 1:1 basis, that is, each ounce of unallocated gold upon conversion will result in one ounce of Sprott ESG Approved Gold, and vice versa. Fees incurred with the exchange will be borne by the Sponsor, not the Trust.

Creation Units may be created or redeemed only by Authorized Participants. Orders must be placed by 3:59 p.m. Eastern Time (“E.T.”). The day on which a Trust receives a valid purchase or redemption order is the order date. An Authorized Participant will be required to enter into a trading agreement with the Mint for purposes of facilitating transfers of unallocated gold between the Trust and the Authorized Participant.

If an Authorized Participant places a creation order for a Creation Unit, it will deliver unallocated gold to the Trust, and the Mint will subsequently exchange the unallocated gold into an

equal amount of Sprott ESG Approved Gold. The Mint stores Sprott ESG Approved Gold for the account of the Trust on an allocated basis (*i.e.*, numbered gold bars held in the Mint’s nominated vaults are identified in the Mint’s records as belonging to the Trust). Generally, the Mint will also, from time-to-time, on a temporary basis store unallocated physical gold bullion under the following circumstances: (1) In connection with transfers of gold to settle creations and redemptions of Creation Units; (2) until additional Sprott ESG Approved Gold can be produced by the Mint; (3) to the extent that the Trust holds gold in an amount less than a whole bar; and (4) in connection with payment of expenses of the Trust.

Creation Units are only issued or redeemed on a day that the Exchange is open for regular trading in an amount of gold determined by the Administrator. Because Sprott ESG Approved Gold can be sourced by the Mint only from a limited number of suppliers, from time-to-time, on a temporary basis until additional Sprott ESG Approved Gold can be produced by the Mint,<sup>38</sup> the Trust will hold gold in unallocated form. No Shares will be issued unless the Mint has received the corresponding amount of unallocated gold from the Authorized Participant and allocated it to the Trust’s Unallocated Account.

According to the Registration Statement, Authorized Participants may surrender Creation Units in exchange for the corresponding amount of gold announced by the Transfer Agent. Generally, all gold delivered to Authorized Participants in connection with such redemptions will be in unallocated form. The Sponsor will instruct the Mint to exchange Sprott ESG Approved Gold into unallocated gold using the procedure described above if the Trust does not have sufficient unallocated gold to meet a redemption request. Upon the surrender of such Shares and the payment of the Transfer Agent’s applicable fee and of any expenses, taxes or charges, the Transfer Agent will deliver to the order of the redeeming Authorized Participant the amount of unallocated gold corresponding to the redeemed Creation Units to such Authorized Participant’s account at a London Gold Clearing Bank. Shares can only be surrendered

<sup>38</sup> Currently, the Mint expects that the creation of new Sprott ESG Approved Gold bars would take about five Business Days. See footnote 26 and accompanying text, *supra*, discussing why the Sponsor believes that a sufficient amount of raw material to create Sprott ESG Approved Gold for the Trust exists and will exist in the future.

for redemption in Creation Units of 25,000 Shares each.

Before surrendering Creation Units for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Creation Units it intends to redeem. The date the Trustee receives that order determines the amount of unallocated gold to be received in exchange. However, orders received by the Trustee after 3:59 p.m. E.T. will be rejected.

The redemption distribution from the Trust will consist of a delivery of unallocated gold to the redeeming Authorized Participant’s account at a London Gold Clearing Bank representing the amount of the unallocated gold held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order.

#### Exchange of Unallocated Gold to Sprott ESG Approved Gold and Sprott ESG Approved Gold to Unallocated Gold

Creations and redemptions of Creation Units will be settled in unallocated gold, meaning that if an Authorized Participant places a creation order for a Creation Unit, it will deliver unallocated gold to the Trust, which will be held in the Trust’s Unallocated Gold Account. The Mint will subsequently exchange the unallocated gold into an equal amount of Sprott ESG Approved Gold as described in “How Sprott ESG Approved Gold Will be Created for the Trust” above upon receipt of instructions from the Sponsor on behalf of the Trust to do so. Once exchanged into bars of Sprott ESG Approved Gold, the Mint stores such gold for account of the Trust on an allocated basis (*i.e.*, numbered gold bars held in the Mint’s nominated vaults are identified in the Mint’s records as belonging to the Trust).

The Mint expects that it will be able to produce Sprott ESG Approved Gold within approximately five Business Days following the receipt of completed conversion request by the Sponsor on behalf of the Trust to exchange unallocated gold into Sprott ESG Approved Gold, subject to production capacity, availability and size requirements. The Business Day on which the conversion is to occur will be confirmed to the Sponsor in writing by the Mint. The Mint will issue a receipt of deposit of the bars of Sprott ESG Approved Gold to the Trust’s Allocated Gold Account on the Business Day the production of all Sprott ESG Approved Gold underlying a conversion request form is completed and the Sprott ESG Approved Gold has been delivered to the Trust’s Allocated Gold Account.



Like creations, redemptions of Creation Units will be settled in unallocated gold. If there is not sufficient unallocated gold in the Trust's Unallocated Gold Account, the Mint will exchange Sprott ESG Approved Gold for an equal amount of unallocated gold upon the receipt of proper instructions from the Sponsor to exchange an amount of Sprott ESG Approved Gold from the Trust's Allocated Account and deposit an equal amount of unallocated gold into the Trust's Unallocated Account. The Sponsor will make such exchange requests based on its determination of the Trust's needs for unallocated gold to meet redemption requests and to pay expenses. The written exchange request must specify the Sprott ESG Approved Gold to be exchanged, including, for each bar to be exchanged, the bar number, the weight in fine and gross troy ounces and the assay characteristics. Exchanges of Sprott ESG Approved Gold into unallocated gold will be processed within one (1) Business Day from reception of proper and complete instructions in writing and will be confirmed by the Mint by facsimile or email on the day the exchange is completed. The Mint will issue a confirmation of a completed exchange by facsimile or by email on the Business Day that the exchange is completed.

All exchanges of unallocated gold to Sprott ESG Approved Gold and from Sprott ESG Approved Gold to unallocated gold are on a 1:1 basis, that is, each ounce of unallocated gold upon conversion will result in one ounce of Sprott ESG Approved Gold, and vice versa. Fees incurred with the exchange will be included in the Sponsor's fee.

#### Net Asset Value

The NAV of the Trust will be calculated by subtracting the Trust's expenses and liabilities on any day from the value of the gold (in whatever form) and cash (if any) owned by the Trust on that day; the NAV per Share will be obtained by dividing the NAV of the Trust on a given day by the number of Shares outstanding on that day.<sup>39</sup>

<sup>39</sup>The Trust will be responsible for the Sponsor's fee and the fees and expenses that are not contractually assumed by the Sponsor, including but not limited to taxes and governmental charges, expenses related to extraordinary services performed by the Sponsor or other service provider of the Trust, and litigation and indemnification obligations of the Trust. The Trust only invests in gold, but may have other assets on its balance sheet from time to time such as cash on a temporary basis or a receivable that is incidental to the operations of the Trust (for example, a receivable created as a result of a fee waiver from the Sponsor).

On each day on which the Exchange is open for regular trading, the Administrator will determine the NAV as promptly as practicable after 4:00 p.m. E.T. The Administrator will value the Trust's gold, regardless of whether it is in the form of allocated Sprott ESG Approved Gold or unallocated gold, on the basis of LBMA Gold Price PM. If the Sponsor deems it necessary, the Sponsor and the Administrator may agree to use a widely recognized pricing service for purposes of ascertaining the price of gold to use when calculating the NAV. The NAV per Share will be calculated by taking the current price of the Trust's total assets, subtracting any liabilities, and dividing by the total number of Shares outstanding.

Authorized Participants will not receive from the Sponsor, the Trust or any affiliates any fee or other compensation in connection with the offering of the Shares.

#### Availability of Information Regarding Gold

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

#### Availability of Information

The intraday indicative value ("IIV") per Share for the Shares will be disseminated by one or more major market data vendors on at least a 15-second delayed basis, as required by NYSE Arca Rule 8.201-E(e)(2)(v). The IIV will be calculated based on the amount of gold held by the Trust (regardless of whether it is in the form of allocated Sprott ESG Approved Gold or unallocated gold) and a price of gold derived from updated bids and offers indicative of the spot price of gold.<sup>40</sup> The NAV of the Trust will be published on each Business Day and will be posted on the Trust's website.

The website for the Trust (<https://sprott.com/investment-strategies/physical-bullion-trusts>) will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price<sup>41</sup> at the close of trading ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Trust will also provide the Trust's prospectus as well as the two most recent reports to shareholders. The daily holdings of the Trust's unallocated gold and Sprott ESG Approved Gold will be available on the Trust's website before 9:30 a.m. E.T. each Business Day. Finally, the Trust's website will be updated once daily to provide the last sale price of the Shares as traded in the U.S. market at the end of regular trading. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Trust will maintain, on its website, current lists of the ESG Criteria, and Sprott ESG Approved Mines and Sprott ESG Approved Mining Companies from which the Trust sources its Sprott ESG Approved Gold. The Trust anticipates that Sprott ESG Approved Mines and Sprott ESG

<sup>40</sup>The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

<sup>41</sup>The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

Approved Mining Companies may be added or removed from such lists over time based on, among other things, whether such Sprott ESG Approved Mines and Sprott ESG Approved Mining Companies meet the evolving ESG Criteria and whether they are Mint Approved Mines. The Trust will update the information on its website promptly after any change to the ESG Criteria, Sprott ESG Approved Mines or Sprott ESG Approved Mining Companies.

#### Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Rule 8.201–E(e) for initial and continued listing of the Shares.

A minimum of two Creation Units or 100,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 20,000 fine ounces of gold or about \$36,527,000 as of February 9, 2022. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201–E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, any related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or

commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's “circuit breaker” rule.<sup>42</sup> The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>43</sup> The Exchange

represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>44</sup>

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures or any other gold derivatives through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to

services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>44</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>42</sup> See NYSE Arca Rule 7.12–E.

<sup>43</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory

comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts. The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>45</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no

charge at [www.lbma.org.uk](http://www.lbma.org.uk). The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to shareholders, and lists of the Trust's ESG Criteria, Sprott ESG Approved Mines and Sprott ESG Approved Mining Companies from which the Trust will source its Sprott ESG Approved Gold. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

#### *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. Discussion and Commission's Findings**

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to

<sup>45</sup> 15 U.S.C. 78f(b)(5).

a national securities exchange.<sup>46</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>47</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The IIV will be calculated based on the amount of gold held by the Trust (regardless of whether it is in the form of allocated Sprott ESG Approved Gold or unallocated gold) and a price of gold derived from updated bids and offers indicative of the spot price of gold. Based on the information provided by the Exchange, the Commission believes that there is no separate market for Sprott ESG Approved Gold. Sprott ESG Approved Gold will be physically indistinguishable from LBMA London Good Delivery gold. All gold held by the Trust, whether Sprott ESG Approved Gold or unallocated gold, will be valued the same and will be determined by the p.m. price of gold expressed in U.S. dollars, as published by the LBMA. Sprott ESG Approved Gold will meet the London Good Delivery standards, and unallocated gold held by the Trust consists of a pool of London Good Delivery gold bars. The LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

Additionally, the website for the Trust (<https://sprott.com/investment-strategies/physical-bullion-trusts>) will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price<sup>48</sup> at the

close of trading ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Trust will also provide the Trust's prospectus as well as the two most recent reports to shareholders.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Trust's website will be updated once daily to provide the last sale price of the Shares as traded in the U.S. market at the end of regular trading. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. While the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape, the last sale price for the Shares will be disseminated over the Consolidated Tape. In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services. Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers.<sup>49</sup>

The Commission also believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange represents that it will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. If the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in

which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.

Additionally, NYSE Arca Rule 8.201-E(g) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).<sup>50</sup>

Moreover, the Commission concludes that the proposal is reasonably designed to mitigate the Shares' susceptibility to manipulation and misuse of nonpublic information in trading in the Shares, consistent with Section 6(b)(5) of the Act,<sup>51</sup> because the Shares will be subject

<sup>49</sup> As the Exchange states, Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers.

<sup>50</sup> The Exchange confirms that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

<sup>51</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>47</sup> 15 U.S.C. 78f(b)(5).

<sup>48</sup> The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

to the Exchange's and other rules below. Specifically:

(1) The Trust will be subject to the criteria in NYSE Arca Rule 8.201–E(e) for initial and continued listing of the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–E(a).

(3) The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities.

(4) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>52</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. These surveillances generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

(5) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(6) Pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold

futures or any other gold derivatives through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

(7) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

(8) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (b) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (f) trading information. The Exchange states that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts. The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

(9) A minimum of 100,000 Shares will be required to be outstanding at the start of trading.

In addition, pursuant to Commentary .04 of NYSE Arca Rule 8.201–E, all statements and representations made in this filing regarding (a) the description

of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer must notify the Exchange of any failure by the Trust to comply with the continued listing requirements. Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor<sup>53</sup> for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Accordingly, for the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act<sup>54</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on the Proposed Rule Change, as Modified by Amendment No. 1

Interested persons are invited to submit written views, data, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2021–65 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–NYSEArca–2021–65. This file number should be included on the

<sup>53</sup> The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>54</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-65 and should be submitted on or before April 21, 2022.

#### V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As stated above, among other things, Amendment No. 1 to the proposed rule change went into greater detail with respect to characteristics of unallocated gold, Sprott ESG Approved Gold, and ESG Criteria, as well as valuation of the Trust's gold. Amendment No. 1 explained how Sprott ESG Approved Gold will be created for the Trust, as well as the process of the exchange or conversion of the types of gold held by the Trust, and how this occurs during creations and redemptions. Further, Amendment No. 1 represented that there is no separate market for Sprott ESG Approved Gold, there is no industry standard for ESG factors that apply to gold production and the value of the gold held by the Trust, whether allocated Sprott ESG Approved Gold or unallocated gold, will

be determined by the LBMA Gold Price PM. Amendment No. 1 made additional representations, including regarding the Information Bulletin. Finally, Amendment No. 1 provided clarifications and technical edits to the proposed rule change. These changes and additional information in Amendment No. 1 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. The Commission believes that such changes and additional information do not raise unique or novel regulatory issues under the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>55</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>56</sup> that the proposed rule change (SR-NYSEArca-2021-65), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

[FR Doc. 2022-06752 Filed 3-30-22; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94517; File No. SR-CboeEDGA-2022-004]

#### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

March 25, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 14, 2022, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</sup> *Id.*

<sup>57</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA" or "EDGA Equities") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt fees for Certification Logical Port fees, effective March 1, 2022.<sup>3</sup>

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,<sup>4</sup> Purge Ports,<sup>5</sup> Multicast PITCH GRP Ports and

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2022 (SR-CboeEDGA-2022-002). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

<sup>5</sup> Purge Ports are dedicated ports that permit a User to simultaneously cancel all or a subset of its orders in one or more symbols across multiple

Multicast PITCH Spin Server Ports.<sup>6</sup> For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.*, "Certification Logical Ports"). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancellations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of \$250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (*i.e.*, Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed \$250 per month per port.<sup>7</sup> The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.<sup>8</sup> Further, the Exchange also notes that other

logical ports by requesting the Exchange to effect such cancellation.

<sup>6</sup> Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

<sup>7</sup> For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed \$500 as [sic] and for Certification Logical Port Fees (*i.e.*, 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × \$0 and 2 FIX Certification Logical Ports × \$250).

<sup>8</sup> For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by users.

exchanges similarly assess fees related to their respective testing environments.<sup>9</sup>

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Port Fees section of the Fees Schedule.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing

<sup>9</sup> See *e.g.*, Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIA X Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 19% of Users to be assessed fees for Certification Logical Ports (*i.e.*, request Certification Logical Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.<sup>13</sup> Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.<sup>14</sup> Further, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.<sup>15</sup>

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be

<sup>13</sup> See Choe EDGA Fees Schedule, Logical Port Fees.

<sup>14</sup> See *e.g.*, Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIA X Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

<sup>15</sup> Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has "levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets."<sup>16</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the

Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>17</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution';

[and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>18</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f) of Rule 19b-4<sup>20</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2022-004 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>18</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

<sup>16</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7-01-13) (Regulation SCI Adopting Release).

<sup>17</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).



Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGA-2022-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2022-004 and should be submitted on or before April 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-06753 Filed 3-30-22; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #17377 and #17378; ALASKA Disaster Number AK-00050]

**Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska**

**AGENCY:** Small Business Administration.  
**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for

the State of Alaska (FEMA-4648-DR), dated 03/24/2022.

*Incident:* Severe Winter Storm and Straight-line Winds.

*Incident Period:* 12/25/2021 through 12/27/2021.

**DATES:** Issued on 03/24/2022.

*Physical Loan Application Deadline Date:* 05/23/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/27/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 03/24/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Denali Borough, Fairbanks North Star Borough, and the City of Nenana

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	1.875
Non-Profit Organizations without Credit Available Elsewhere .....	1.875
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere .....	1.875

The number assigned to this disaster for physical damage is 17377 B and for economic injury is 17378 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez,**  
Associate Administrator for Disaster Assistance.

[FR Doc. 2022-06795 Filed 3-30-22; 8:45 am]

**BILLING CODE 8026-03-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #17352 and #17353; Kansas Disaster Number KS-00149]

**Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Kansas**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA-4640-DR), dated 02/17/2022.

*Incident:* Severe Storms and Straight-line Winds.

*Incident Period:* 12/15/2021.

**DATES:** Issued on 03/22/2022.

*Physical Loan Application Deadline Date:* 04/18/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/17/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kansas, dated 02/17/2022, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Norton, Phillips.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez,**  
Associate Administrator for Disaster Assistance.

[FR Doc. 2022-06787 Filed 3-30-22; 8:45 am]

**BILLING CODE 8026-03-P**

**DEPARTMENT OF STATE**

[Public Notice: 11698]

**60-Day Notice of Proposed Information Collection: Medical Examination for Visa or Refugee Applicant: DS-2054, DS-3025, DS-3026, DS-3030**

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and

<sup>21</sup> 17 CFR 200.30-3(a)(12).

Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to midnight on Eastern Standard Time 60 days after date of publication in the **Federal Register**.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering “Docket Number: DOS–2022–0007” in the Search field. Then click the “Comment Now” button and complete the comment form.

- *Email:* [PRA\\_BurdenComments@state.gov](mailto:PRA_BurdenComments@state.gov).

You must include the DS form number (if applicable), information collection title, and the OMB control number in the title or body of any correspondence. You should not submit case inquiries to either of the methods listed above. You should not include case numbers in any comment submitted via [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham who may be reached at [PRA\\_BurdenComments@state.gov](mailto:PRA_BurdenComments@state.gov) or at 202–485–7635.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Medical Examination for Visa or Refugee Applicant.

- *OMB Control Number:* 1405–0113.

- *Type of Request:* Extension of a Currently Approved Collection.

- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).

- *Form Number:* Forms DS–2054, DS–3030, DS–3025, DS–3026.

- *Respondents:* Visa Applicants; Follow-to-Join Refugee/Asylum Applicants; Parole Applicants with Boarding Foils.

- *Estimated Number of Respondents:* 110,412.

- *Estimated Number of Responses:* 110,412.

- *Average Time per Response:* 1 hour.

- *Total Estimated Burden Time:* 110,412 annual hours.

- *Frequency:* Once per respondent.

- *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- 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.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

Forms for this collection are completed by panel physicians for refugees, noncitizens seeking a visa, and some individuals who need a boarding foil in order to be paroled into the United States. The collection records medical information necessary to determine whether noncitizens have medical conditions affecting the individual’s eligibility for an immigration benefit or affecting the public health and requiring treatment.

**Methodology**

A panel physician, contracted by the consular post in accordance with instructions issued by the Centers for Disease Control (CDC), performs the medical examination of the applicant and completes the forms. Panel physicians complete Forms DS–3025, DS–3026, and DS–3030. Upon completing the medical examination, the examining panel physician submits a report to the consular section on Form DS–2054 and includes the DS–3024, DS–3026, and the DS–3030. The information provided in these forms assists the Department for visa adjudication, follow-to-join refugee adjudication, and for the purpose of issuing boarding foils for certain individuals seeking parole from the Department of Homeland Security, and is thereafter retained in the

Department’s systems. The information is also provided to the CDC.

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, Department of State.*

[FR Doc. 2022–06829 Filed 3–30–22; 8:45 am]

**BILLING CODE 4710–06–P**

**DEPARTMENT OF STATE**

[Public Notice: 11694]

**Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine**

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the “Act”) (22 U.S.C. 2318(a)(1)), and Presidential Delegation of Authority dated March 16, 2022, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to Ukraine. I further determine that the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to \$800 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 16, 2022.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2022–06745 Filed 3–30–22; 8:45 am]

**BILLING CODE 4710–25–P**

**DEPARTMENT OF STATE**

[Public Notice: 11651]

**Determination Pursuant to the Foreign Missions Act**

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214 of September 20, 1994, I hereby determine it is reasonably necessary to achieve one or more of the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to impose limitations on travel on the members of the Belarusian Mission to the United

States and their immediate family members and to comply with any other requirements as may be established by the Director or Deputy Director of the Office of Foreign Missions with respect to limitations on travel within the United States.

**Clifton Seagroves,**

*Acting Director, Office of Foreign Missions,  
Department of State.*

[FR Doc. 2022-06763 Filed 3-30-22; 8:45 am]

**BILLING CODE 4711-07-P**

## DEPARTMENT OF STATE

[Public Notice: 11693]

### Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the "Act") (22 U.S.C. 2318(a)(1)), and Presidential Delegation of Authority dated March 12, 2022, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to Ukraine. I further determine that the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to \$200 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 12, 2022.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2022-06746 Filed 3-30-22; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF STATE

[Public Notice: 11695]

### Determination Under Section 552(c)(2) of the Foreign Assistance Act of 1961 To Provide Commodities and Services for Assistance to Ukraine

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961 (the "Act") (22 U.S.C. 2348a(c)(2)), and Presidential Delegation of Authority dated March 16,

2022, I hereby determine that, as a result of an unforeseen emergency, the immediate provision of assistance under chapter 6 of part II of the FAA in amounts in excess of the funds otherwise available for such assistance is important to the national interests of the United States.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to \$10 million in commodities and services from the inventory and resources of any United States government agency to provide assistance to Ukraine under the authority of section 552(c)(2) of the Act. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: March 16, 2022.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2022-06747 Filed 3-30-22; 8:45 am]

**BILLING CODE 4710-25-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2022-0003]

### Postponement of Meetings of the United States-Colombia Environmental Affairs Council and Environmental Cooperation Commission

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Postponement of meetings and extended deadline to submit comments.

**SUMMARY:** On March 22, 2022, the Office of the United States Trade Representative (USTR) and the U.S. Department of State (State) announced that the parties to the United States-Colombia Trade Promotion Agreement (TPA) and the United States-Colombia Environmental Cooperation Agreement (ECA) intended to hold meetings of the Environmental Affairs Council (Council) and Environmental Cooperation Commission (Commission). USTR and State are postponing the meetings and will announce rescheduled dates. USTR will continue to accept written comments.

#### DATES:

*Comments:* USTR is waiving the March 30, 2022, submission deadline and encourages interested persons to file comments and supporting documentation via [www.regulations.gov](http://www.regulations.gov), using docket number USTR-2022-0003. The instructions for submission are in the

'Requirements for Submissions' section of the notice published on March 22, 2022 (87 FR 16302). For alternatives to online submissions, please contact Katy Sater at [mary.c.sater@ustr.eop.gov](mailto:mary.c.sater@ustr.eop.gov), (202) 395-9522, or Sarah Flores at [FloresSC@state.gov](mailto:FloresSC@state.gov), (202) 647-0156.

*Meetings:* The closed government-to-government and public meetings scheduled for April 7, 2022, are postponed and will be rescheduled at later date. The time and location of the rescheduled meetings will be available on the USTR and State websites.

**FOR FURTHER INFORMATION CONTACT:** Katy Sater, Director for Environment and Natural Resources, USTR, [mary.c.sater@ustr.eop.gov](mailto:mary.c.sater@ustr.eop.gov), (202) 395-9522, or Sarah Flores, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues, State, [FloresSC@state.gov](mailto:FloresSC@state.gov), (202) 647-0156.

**Kelly Milton,**

*Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative.*

[FR Doc. 2022-06766 Filed 3-30-22; 8:45 am]

**BILLING CODE 3390-F2-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2022-0418]

### Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Notice of Landing Area Proposal

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves gathering information from airport sponsors about any establishment, construction, alteration, or change to the status or use of an airport. The FAA uses this information to conduct airport airspace analyses to understand the impact of proposed actions on existing and planned operating procedures, determine potential hazardous effects, and identify any mitigating measures needed to enhance safe air navigation. Additionally, the information updates the aeronautical charts and maps of

airports having emergency landing or landmark values.

**DATES:** Written comments should be submitted by May 31, 2022.

**ADDRESSES:** Please send written comments:

*By Electronic Docket:*  
[www.regulations.gov](http://www.regulations.gov) (Enter docket number into search field).

*By mail:* Raymond Zee, Airport Data and Airspace Branch (AAS-120), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

*By fax:* 202-267-5383.

**FOR FURTHER INFORMATION CONTACT:**

Raymond Zee by email at: [Raymond.Zee@faa.gov](mailto:Raymond.Zee@faa.gov); phone: 202-267-7669.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120-0036.

*Title:* Notice of Landing Area Proposal.

*Form Numbers:* FAA Form 7480-1.

*Type of Review:* Renewal of an information collection.

*Background:* Title 14 Code of Federal Regulations Part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports, requires that each person who intends to establish, construct, deactivate, or change the status of an airport, runway, or taxiway notify the FAA of such activity. The FAA uses the information collected to determine the effect the proposed action will have on existing airports and on the safe and efficient use of airspace by aircraft, the effects on existing airspace or contemplated traffic patterns of neighboring airports, the effects on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area will have on the airport proposal. This information also updates aeronautical charts and maps of airports having emergency landing or landmark values. The FAA collects this information via an online reporting tool

available on the FAA website or via FAA Form 7480-1.

*Respondents:* Approximately 645 applicants.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per*

*Response:* 1 hour.

*Estimated Total Annual Burden:* 645 hours.

**Raymond Zee,**

*Civil Engineer, Airport Data and Airspace Branch, Office of Airport Safety and Standards.*

[FR Doc. 2022-06819 Filed 3-30-22; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

[Docket No. FHWA-2022-0006]

**Agency Information Collection Activities: Request for Comments for a New Information Collection**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new (periodic) information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 18, 2021. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by May 31, 2022.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number 2022-0006 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

*Fax:* 1-202-493-2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m.

and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Eddie Curtis, Office of Operations, HOP, (404) 780-0927 Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Traffic Signal Change and Clearance Interval Pooled Fund Study.

*Background:* The timing of yellow change and red clearance intervals are central to the safe transfer of right-of-way at signalized intersections. The current edition of the Manual of Uniform Traffic Control Devices for Streets and Highways[1] (MUTCD) requires a yellow change interval to warn traffic of an impending change in right-of-way assignment at intersections with traffic control signals and requires that the duration of the yellow change interval be determined using engineering practices. While the MUTCD does not require a red clearance interval, it does require that the duration of the red clearance interval also be determined using engineering practices if such an interval is used. The MUTCD refers to the Institute of Transportation Engineers' (ITE) Manual of Traffic Signal Design or ITE's Traffic Control Devices Handbook as examples of engineering practices but does not require a specific engineering practice. Agencies have the flexibility to use these referenced documents, other engineering research or documents, or their own policies and procedures that are developed based on engineering practices. In March 2020, ITE published Guidelines for Determining Traffic Signal Change and Clearance Intervals, A Recommended Practice of the Institute of Transportation Engineers.

A Transportation Pooled Fund Study has been established to study the implications of the published guidelines, evaluate the state of the practice and to conduct research to address knowledge gaps that contribute to uncertainty and a lack in uniformity in the documentation of methods applied to develop change and clearance intervals. There are no explicit requirements for State DOTs or local agencies responsible for the design and implementation of traffic signal change and clearance intervals to demonstrate how their transportation program develops and applies traffic signal change and clearance intervals. It is essential for FHWA to examine the methods and practices involved in the development of traffic signal change and

clearance to establish the state of the practice, to aid in the identification of research gaps, and to support implementation of documentation to harmonize practices nationally.

**Respondents:** Approximately 410 participants, which would allow for up to 2 participants from each of the 50 State Departments of Transportation (DOT), plus the District of Columbia and Puerto Rico, and up to 4 responses from within the top 75 metropolitan areas.

**Frequency:** One-time collection.

**Estimated Average Burden per**

**Response:** Approximately 15 minutes.

**Estimated Total Annual Burden**

**Hours:** Approximately 103 hours for a one-time collection.

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including: (1) Ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (2) ways that the burden could be minimized, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 25, 2022.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2022-06749 Filed 3-30-22; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0118]

#### Commercial Driver's License Standards: Application for Exemption; Werner Enterprises, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant Werner Enterprises, Inc. (Werner) an exemption from the regulation that requires a commercial learner's permit (CLP) holder operating a commercial motor vehicle (CMV) to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, in the passenger seat. Werner requested an exemption to allow CLP holders who have passed the CDL skills test but have

not yet obtained the CDL document from their State of domicile, to drive a CMV without having a CDL holder in the passenger seat. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective March 31, 2022 and expires March 31, 2027.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-4225; *MCPSPD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

###### *Viewing Comments and Document*

To view comments, go to *www.regulations.gov*, insert the docket number "FMCSA-2021-0118" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click "Browse Comments."

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

##### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the

current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### III. Background

###### *Current Regulation Requirements*

Under 49 CFR 383.25(a)(1) a CLP holder must always be accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must always be physically present in the front seat of the vehicle next to the CLP holder while operating a CMV on public roads or highways and must have the CLP holder under observation and direct supervision or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

###### *Applicant's Request*

Werner requests the exemption to allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, be allowed to drive without having a CDL holder seated beside them in the vehicle. Werner, however, indicates in their exemption request that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. Werner contends that an exemption from this regulation will benefit Werner and the trucking industry in three ways: Improving efficiency of freight operations by maximizing driver employment during an historic driver shortage; creating immediate employment and compensation opportunities to qualified drivers; and improving the overall safety of the new driver experience. Werner believes it will face a significant burden in all three areas if this exemption is not granted.

Werner asserts that 49 CFR 383.25(a)(1) has created a significant burden on its operations. Prior to the implementation of the regulation, a new driver's State of domicile issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL made it possible for Werner to place the new driver as "on duty" and route him

or her to the State of domicile to obtain a CDL without entering a second driver into an “on duty” status, thus allowing productive freight movement for Werner and compensation for the new driver.

#### IV. Equivalent Level of Safety

Werner believes that applying the exemption only to drivers who have passed the CDL skills test, hold a CLP, and operate the CMV under supervision of a CDL holder who is somewhere in the vehicle, will ensure an equivalent level of safety. Werner believes that there is no difference between the CLP holders who have passed the CDL skills test and other truck drivers on the road. In fact, Werner notes that by allowing a CLP holder who has passed the CDL skills test out of State to drive en route to their State of domicile with a CDL holder present in the vehicle, safety will be improved over current regulations, which allow a new CDL holder to drive unsupervised immediately after receiving his or her CDL documentation. Werner will ensure this level of safety by maintaining proper, up-to-date records for all drivers in possession of a CLP who have passed the CDL skills test.

#### V. Public Comments

On August 18, 2021, FMCSA published notice of Werner’s application for exemption and requested public comment (86 FR 46310). The Agency received 25 comments. The commenters that opposed Werner’s request consisted of truck drivers, driver-trainers, other individuals, and the Owner-Operator Independent Drivers Association (OOIDA). These respondents do not believe that it is safe for a CLP holder to operate a CMV without the supervision of a CDL driver-trainer in the front seat of the truck.

For example, OOIDA wrote, “The regulations requiring an experienced driver in the front seat with a permit holder were implemented with safety in mind. As we move closer to the Entry-Level Driver Training rule taking effect next year, FMCSA should be finding ways to further bolster training requirements, not weaken them. Granting this exemption would do just that. Because Werner has not demonstrated that this exemption would achieve a level of safety equivalent or greater than the safety level under the current regulations, a waiver should not be granted.”

Mr. Roger Issacs said, “I don’t think this should be approved. This would open the door for permit holders to run as a team driver, when some may not be able to pass a driver’s test, with no eyes

on anything they could do wrong, when trainer is asleep in sleeper.”

The Agriculture Transportation Coalition (AgTC), American Trucking Associations (ATA), Idaho-Oregon Fruit and Vegetable Association, Truckload Carriers Association, truck drivers, and some individuals submitted comments supporting Werner’s application for exemption.

For example, AgTC said, “The AgTC supports Werner’s application for exemption to allow commercial learner’s permit (CLP) holders who have successfully passed the commercial driver’s license (CDL) skills test to be able to drive a commercial motor vehicle (CMV) without having a CDL holder seated beside them in the CMV. The exemption would boost operational productivity and get drivers employed faster. Not allowing Werner to immediately designate a new driver as “on duty” in order to drive to his or her home state to get CDL documentation creates inefficiency in the supply chain.”

The ATA stated, “Given the ongoing driver shortage, ATA is vitally interested in removing employment barriers to increase efficiency without hindering safety. As such, ATA appreciates the opportunity to comment on this important petition. Specifically, ATA believes that granting Werner’s exemption would achieve an equivalent or greater level of safety, mitigate the impact of state driver’s licensing agency (SDLA) processing delays, address the needs of a mobile workforce, and minimize costs and burdens for the trucking industry.”

#### VI. FMCSA Response to Comments and Decision

FMCSA has evaluated Werner’s application for exemption and the public comments. The Agency is not aware of data or information that would suggest that Werner has lapses in its safety management controls, especially those involving its supervision of CMV drivers. Because the exemption is restricted to Werner’s CLP holders who have documentation that they have passed the CDL skills test and could operate the CMV at any time upon receipt of the CDL document from the State of domicile, the Agency believes the exemption will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption will enable these drivers to operate a CMV as a team driver without requiring that the accompanying CDL holder be on duty and in the front seat while the vehicle is moving. Because these drivers have

already met all the requirements for a CDL but have yet to pick up the CDL document from their State of domicile, their safety performance is expected to be the same as any other newly credentialed CDL holder.

FMCSA has previously granted similar exemptions to C.R. England—initially in 2015, renewed in 2017 (82 FR 48889, Oct. 20, 2017)—and to CRST Expedited—initially in 2016, and subsequently renewed in 2018 (83 FR 53149, Oct. 19, 2018) and recently to Wilson Logistics (86 FR 11050, Feb. 23, 2021).

A copy of Werner’s application for exemption is available for review in the docket for this notice.

#### VII. Terms and Conditions of the Exemption

##### *Extent of the Exemption*

The exemption from 49 CFR 383.25(a)(1) will allow Werner’s drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle. The CDL holder must remain in the vehicle, but not in the front seat, at all times while the CLP holder is driving. The exemption is contingent upon Werner maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver’s license and CLP with the required endorsements, have in his or her possession documentation that he or she has passed the CDL skills test, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

##### *Preemption*

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

##### *Notification to FMCSA*

Under the exemption, the Werner must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5T), involving any of the CMVs operating under the terms of this

exemption. The notification must include the following information:

- a. Exemption Identifier and docket number, *i.e.*, Werner, FMCSA–2021–0118.
- b. Name of operating carrier and USDOT number.
- c. Date of the accident.
- d. City or town, and State, in which the accident occurred, or closest to the accident scene.
- e. Driver's name and license number.
- f. Co-driver's name (if any) and license number.
- g. Vehicle number and state license number.
- h. Number of individuals suffering physical injury.
- i. Number of fatalities.
- j. The police-reported cause of the accident, if provided by the enforcement agency.
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

#### VIII. Termination

FMCSA does not believe the motor carriers and drivers covered by this

exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

**Robin Hutcheson,**

*Acting Administrator.*

[FR Doc. 2022–06796 Filed 3–30–22; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in

property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:**

OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

**Notice of OFAC Actions**

On March 24, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

**BILLING CODE 4810–AL–P**

**Individuals:**

1. GREF, Herman Oskarovich (Cyrillic: ГРЕФ, Герман Оскарович) (a.k.a. GRAF, Herman; a.k.a. GREF, German Oskarovich), Russia; DOB 08 Feb 1964; POB Panfilovo, Kazakhstan; nationality Russia; Gender Male; Passport 760508990 (Russia); National ID No. 4509555545 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. OBNOSOV, Boris Viktorovich (Cyrillic: ОБНОСОВ, Борис Викторович), Moskovskaya Oblast, Russia; DOB 26 Jan 1953; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

**Entity:**

1. TACTICAL MISSILES CORPORATION JSC (Cyrillic: АО КОРПОРАЦИЯ ТАКТИЧЕСКОЕ РАКЕТНОЕ ВООРУЖЕНИЕ) (a.k.a. АКТСИОНЕРНОЕ ОБЩЕСТВО КОРПОРАТСИЯ ТАКТИЧЕСКОЕ РАКЕТНОЕ ВООРУЖЕНИЕ; a.k.a. "KTRV" (Cyrillic: "КТРВ")), d. 7, ul. Il'icha, Korolev, Moskovskaya Obl. 141080, Russia (Cyrillic: д. 7, ул. Ильича, Королёв, Московская Область 141080, Russia); Organization Established Date 13 Mar 2003; Government Gazette Number 07503313 (Russia); Registration Number 1035003364021 (Russia) [RUSSIA-EO14024].



Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

2. AKTSIONERNOE OBSHCHESTVO GOSUDARSTVENNOE NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE REGION (a.k.a. AO GNPP REGION; a.k.a. REGION SCIENTIFIC & PRODUCTION ENTERPRISE JSC; a.k.a. REGION SCIENTIFIC AND PRODUCTION ENTERPRISE JSC), Sh Kashirskoe D. 13A, Moscow 115230, Russia; Organization Established Date 13 Jan 1992; Tax ID No. 7724552070 (Russia); Registration Number 1057747873875 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

3. AKTSIONERNOE OBSHCHESTVO TURAEVSKOE MASHINOSTROITELNOE KONSTRUKTORSKOE BYURO SOYUZ (a.k.a. AO TMKB SOYUZ; a.k.a. SOYUZ TURAEVO ENGINEERING DESIGN BUREAU JSC), Ter. Promzona Turaevo Str 10, Lytkarino 140080, Russia; Organization Established Date 01 Aug 1964; Tax ID No. 5026000759 (Russia); Registration Number 1035004901700 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

4. JOINT STOCK COMPANY 711 AIRCRAFT REPAIR PLANT (a.k.a. JSC 711 AIRCRAFT REPAIR PLANT; a.k.a. "711 ARZ AO"), Ul. Chkalova D.18, Borisoglebsk 397171, Russia; Organization Established Date 10 Jun 1923; Tax ID No. 3604016369 (Russia); Registration Number 1063604012790 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

5. JOINT STOCK COMPANY AZOVSKI OPTIKO MECHANICHESKY ZAVOD (a.k.a. AZOV OPTOMECHANICAL PLANT JSC; a.k.a. "AOMZ AO"), Ul. Promyshlennaya D. 5, Azov 346780, Russia; Organization Established Date 04 Mar 1992; Tax ID No. 6140022069 (Russia); Registration Number

1046140009530 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

6. JOINT STOCK COMPANY CENTRAL DESIGN BUREAU OF AUTOMATICS (a.k.a. CENTRAL DESIGN BUREAU FOR AUTOMATICS ENGINEERING JSC; a.k.a. "TSKBA AO"), PR-KT Kosmicheskii D. 24 A, Omsk 644027, Russia; Organization Established Date 10 Sep 1949; Tax ID No. 5506202219 (Russia); Registration Number 1085543005976 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

7. JOINT STOCK COMPANY MACHINE BUILDING DESIGN BUREAU (a.k.a. "AO KBM"), Ul. Sosinskaya D. 43, Moscow 109316, Russia; Organization Established Date 06 Jan 1993; Tax ID No. 7722307636 (Russia); Registration Number 1057709110436 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

8. JOINT STOCK COMPANY RYAZANSKOE KONSTRUKTORSKOE BJURO GLOBUS (a.k.a. AO RKB GLOBUS; a.k.a. GLOBUS RYAZAN DESIGN BUREAU JSC; a.k.a. RKB GLOBUS PAO), Ul. Vysokovoltnaya D. 6, Ryazan 390013, Russia; Organization Established Date 01 Oct 1955; Tax ID No. 6229060995 (Russia); Registration Number 1086229000560 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

9. JOINT STOCK COMPANY SALUTE (a.k.a. SALYUT AO; a.k.a. SALYUT JSC), Sh. Moskovskoe P. Mekhzavod D. 20, Samara 443028, Russia; Organization Established Date 25 Dec 1941; Tax ID No. 6313034986 (Russia); Registration Number 1026300840983 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

10. JOINT STOCK COMPANY SMOLENSK AIRCRAFT PLANT (a.k.a. JSC SMOLENSK AVIATION PLANT; a.k.a. SMOLENSK AIRCRAFT PLANT JSC; a.k.a. "AO SMAZ"), Ul. Frunze D. 74, Smolensk 214006, Russia; Organization Established Date 1926; Tax ID No. 6729001476 (Russia); Registration Number 1026701424056 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

11. JOINT STOCK COMPANY STATE MACHINE BUILDING DESIGN BUREAU VYMPPEL BY NAME I.I. TOROPOV (a.k.a. AO GOS MKB VYMPPEL IM. I.I. TOROPOVA; a.k.a. GOS MKB VYMPPEL IM. I.I. TOROPOVA AO; a.k.a. VYMPPEL STATE ENGINEERING DESIGN BUREAU JSC NAMED AFTER I.I. TOROPOV), Sh. Volokolamskoe D. 90, Moscow 125424, Russia; Organization Established Date 26 Dec 1991; Tax ID No. 7733546058 (Russia); Registration Number 1057747296166 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

12. JOINT STOCK COMPANY URAL DESIGN BUREAU DETAL (a.k.a. AO UPKB DETAL; a.k.a. DETAL URAL DESIGN BUREAU JSC), Ul. Pionerskaya D.8, Kamensk-Uralskiy 623409, Russia; Organization Established Date 1949; Tax ID No. 6612011546 (Russia); Registration Number 1026600930630 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

13. JSC MBDB ISKRA (a.k.a. ISKRA ENGINEERING DESIGN BUREAU JSC NAMED AFTER I.I. KARTUKOV; a.k.a. MKB ISKRA AO), Proezd Petrovsko-Razumovskii D. 28, Moscow 127287, Russia; Organization Established Date 1946; Tax ID No. 7714288059 (Russia); Registration Number 1027714027395 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

14. PUBLIC JOINT STOCK COMPANY ARZAMASSKOE NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE TEMP-AVIA (f.k.a. OPEN JOINT STOCK COMPANY ARZAMASSKOYE OPYTNO KONSTRUKTORSKOYE BYURO TEMP; a.k.a. PJSC ARZAMAS RESEARCH AND PRODUCTION ENTERPRISE; a.k.a. TEMP-AVIA ARZAMAS RESEARCH & PRODUCTION ASSOCIATION JSC; a.k.a. TEMP-AVIA ARZAMAS RESEARCH AND PRODUCTION ASSOCIATION JSC; a.k.a. TEMP-AVIA PAO), 26, Kirova Street, Arzamas 607220, Russia; Organization Established Date 1958; Tax ID No. 5243001887 (Russia); Registration Number 1025201335994 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

15. RADUGA STATE MACHINE BUILDING DESIGN BUREAU JOINT STOCK COMPANY (a.k.a. AO GOSMKB RADUGA IM. A.YA.BEREZNYAKA; a.k.a. RADUGA DESIGN BUREAU; a.k.a. RADUGA STATE ENGINEERING DESIGN BUREAU JSC NAMED AFTER A.Y. BEREZNYAK), Ul. Zhukovskogo D. 2, Lit. A, Dubna 141980, Russia; Organization Established Date 25 Dec 1991; Tax ID No. 5010031470 (Russia); Registration Number 1055024900006 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

16. STATE SCIENTIFIC RESEARCH INSTITUTE OF MECHANICAL ENGINEERING IMENI V.V. BAKHIREVA (a.k.a. AO GOSNIIMASH; a.k.a. SCIENTIFIC RESEARCH INSTITUTE FOR MECHANICAL ENGINEERING JSC IN THE NAME OF V.V. BAKHIREV), PR-KT Sverdlova D. 11 A, Dzerzhinsk 606002, Russia; Organization Established Date 13 Jan 1992; Tax ID No. 5249093130 (Russia); Registration Number 1085249000650 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

17. TRV AUTO LIMITED LIABILITY COMPANY (a.k.a. TRV AVTO OOO; a.k.a. TRV-ENGINEERING LLC), Ul Ilyicha D 7, Korolev 141080, Russia; Organization Established Date 03 May 2005; Tax ID No. 5018100929 (Russia);

Registration Number 1055003010985 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

18. AKTSIONERNOE OBSHCHESTVO ELEKTROTYAGA (a.k.a. AO ELEKTROTYAGA; a.k.a. JOINT STOCK COMPANY ELECTROTYAGA), Ul. Kalinina D. 50 A, Saint Petersburg 198099, Russia; Organization Established Date 01 Nov 2001; Tax ID No. 7805230257 (Russia); Registration Number 1027802718437 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Sea Underwater Weapon Gidropribor, a person whose property and interests are blocked pursuant to E.O. 14024.

19. AKTSIONERNOE OBSHCHESTVO PETROVSKII ELEKTROMEKHANICHESKII ZAVOD MOLOT (a.k.a. AO PEMZ MOLOT; a.k.a. PETROVSKY ELECTROMECHANICAL ZAVOD MOLOT), Ul. Gogolya D. 40, Petrovsk 412540, Russia; Organization Established Date 27 Dec 1991; Tax ID No. 6444009038 (Russia); Registration Number 5067847016782 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

20. AKTSIONERNOE OBSHCHESTVO RAVENSTVO-SERVICE (a.k.a. AO RAVENSTVO-SERVICE; a.k.a. SC RAWENSTVO-SERVICE), Ul. Promyshlennaya D. 19, Saint Petersburg 198099, Russia; Organization Established Date 25 Mar 1993; Tax ID No. 7805417618 (Russia); Registration Number 1079847012453 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

21. AKTSIONERNOE OBSHCHESTVO SARATOVSKI RADIOPRIBORNYI ZAVOD (a.k.a. JSC SARATOVSKI RADIOPRIBORNYI ZAVOD; a.k.a. "AO SRZ"; a.k.a. "SRZ PAO"), PR-KT 50 Let Oktyabrya D. 108, Saratov 410040, Russia; Organization Established Date 1970; Tax ID No. 6453104288 (Russia); Registration Number 1096453002690 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

22. AKTSIONERNOE OBSHCHESTVO VERKHNEUFALEISKII ZAVOD URALELEMENT (a.k.a. AO URALELEMENT; a.k.a. JSC VERHNEUFALEYSKY ZAVOD URALELEMENT), Ul. Dmitrieva D. 24, Verkhniy Ufaley 456800, Russia; Organization Established Date 12 May 1992; Tax ID No. 7402006277 (Russia); Registration Number 1047401500046 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Sea Underwater Weapon Gidropribor, a person whose property and interests are blocked pursuant to E.O. 14024.

23. JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON (a.k.a. AKTSIONERNOE OBSHCHESTVO KONTSEERN GRANIT ELEKTRON; a.k.a. AO KONSTERN GRANIT ELEKTRON; a.k.a. JSC CONCERN GRANIT ELEKTRON), Ul. Gospitalnaya D. 3, Saint Petersburg 191014, Russia; Organization Established Date 1910; Tax ID No. 7842335610 (Russia); Registration Number 5067847016782 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

24. JOINT STOCK COMPANY CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR (a.k.a. AKTSIONERNOE OBSHCHESTVO KONSTERN MORSKOE PODVONOE ORUZHIE GIDROPRIBOR; a.k.a. AO KONSTERN MPO GIDROPRIBOR; a.k.a. JSC CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR), PR-KT B. Sampsonievskii D. 24, Saint Petersburg 194044, Russia; Organization Established Date 15 Sep 1943; Tax ID No. 7802375889 (Russia); Registration Number 1069847557394 (Russia) [RUSSIA-EO14024] (Linked To: TACTICAL MISSILES CORPORATION JSC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tactical Missiles Corporation JSC, a person whose property and interests are blocked pursuant to E.O. 14024.

25. JOINT STOCK COMPANY DAGDIZEL PLANT (a.k.a. FACTORY DAGDIZEL; a.k.a. JOINT STOCK COMPANY ZAVOD DAGDIZEL; a.k.a. ZAVOD DAGDIZEL OPEN JOINT STOCK COMPANY), 1, Lenin Street, Kaspiysk 368300, Russia; Organization Established Date 1932; Tax ID No. 0545001919 (Russia); Registration Number 1020502130351 (Russia) [RUSSIA-

EO14024] (Linked To: JOINT STOCK COMPANY CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Sea Underwater Weapon Gidropribor, a person whose property and interests are blocked pursuant to E.O. 14024.

26. JOINT STOCK COMPANY RESEARCH AND DESIGN INSTITUTE SEA THERMAL ENGINEERING (a.k.a. AO NII MORTEPLOTEKHNIKI; a.k.a. JSC RESEARCH & DESIGN INSTITUTE MORTEPLOTEKHNIKA; a.k.a. JSC RESEARCH AND DESIGN INSTITUTE MORTEPLOTEKHNIKA), Ul. Chernikova, D. 44, Lomonosov 189510, Russia; Organization Established Date 15 Dec 1991; Tax ID No. 7402006277 (Russia); Registration Number 1047401500046 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN SEA UNDERWATER WEAPON GIDROPRIBOR).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Sea Underwater Weapon Gidropribor, a person whose property and interests are blocked pursuant to E.O. 14024.

27. JOINT STOCK COMPANY SEVERNIY PRESS (a.k.a. AO SEVERNYI PRESS; a.k.a. JSC SEVERNY PRESS; a.k.a. SEVERNY PRESS AO), Ul. Tallinskaya . 7, Saint Petersburg 195196, Russia; Organization Established Date 24 Feb 1992; Tax ID No. 6444009038 (Russia); Registration Number 1146444000010 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

28. JOINT STOCK COMPANY ZAVOD KULAKOVA (a.k.a. AO ZAVOD IM. A.A.KULAKOVA; a.k.a. JSC ZAVOD KULAKOVA), Ul. Yablochkova D. 12, Saint Petersburg 197198, Russia; Organization Established Date 30 Jan 1992; Tax ID No. 7813346618 (Russia); Registration Number 5067847003428 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

29. JSC RAWENSTVO (a.k.a. AO RAVENSTVO; a.k.a. SC RAWENSTVO), Ul. Promyshlennaya D. 19, Saint Petersburg 198099, Russia; Organization Established Date 24 Mar 1988; Tax ID No. 7805395957 (Russia); Registration Number 1069847101169 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY CONCERN GRANIT-ELECTRON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Concern Granit-Electron, a person whose property and interests are blocked pursuant to E.O. 14024.

30. JOINT STOCK COMPANY KRONSHADT (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО КРОНШТАДТ) (a.k.a. AKTSIONERNOE OBSHCHESTVO KRONSHADT; a.k.a. AO KRONSHADT), Descartes Business Center, Building 9, No. 18, Andropova Prospekt, Moscow 1115432, Russia (Cyrillic: Бизнес-центр Декарт, д. 18, корп. 9, Пр. Андропова, Москва 1115432, Russia); Building 4, No. 54, Maliy Prospekt, Vasilevskiy Island, St. Petersburg 199178, Russia; Organization Established Date 1990; Tax ID No. 7808035536 (Russia); Registration Number 1027809176141 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

31. VERTOLETY ROSSII AO (a.k.a. AKTSIONERNOE OBSHCHESTVO VERTOLETY ROSSII; a.k.a. JOINT STOCK COMPANY RUSSIAN HELICOPTERS; a.k.a. JSC RUSSIAN HELICOPTERS; a.k.a. OPEN JOINT STOCK COMPANY RUSSIAN HELICOPTERS; a.k.a. RUSSIAN HELICOPTERS JOINT STOCK COMPANY), Entrance 9, 12, Krasnopresnenskaya emb., Moscow 123610, Russia; 1, Ul. Bolshaya Pionerskaya, Moscow 115054, Russia; Executive Order 13662 Directive Determination - Subject to Directive 3; Registration ID 1077746003334 (Russia); Tax ID No. 7731559044 (Russia); Government Gazette Number 98927243 (Russia); For more information on directives, please visit the following link: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives> [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: ROSTEC).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

32. INTERNATIONAL HELICOPTERS PROGRAMS LIMITED LIABILITY COMPANY (a.k.a. MEZHDUNARODNYE VERTOLETNYE PROGRAMMY OOO), Ul. Garshina D. 26/3, Lyubertsy, Tomilino 140070, Russia; Organization Established Date 29 Jun 2009; Tax ID No. 5027150429 (Russia); Registration Number 1095027007008 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

33. JOINT STOCK COMPANY 150 AIRCRAFT REPAIR PLANT (a.k.a. "150 AIRCRAFT REPAIR PLANT"; a.k.a. "AO 150 ARZ"), Ul. Garnizonnaya D. 4,



Svetlyi, P. Lyublino-Novoe 238347, Russia; Organization Established Date 03 Dec 1996; Tax ID No. 3913501370 (Russia); Registration Number 1093925016767 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

34. JOINT STOCK COMPANY 356 AIRCRAFT REPAIR PLANT (a.k.a. "356 AIRCRAFT REPAIR PLANT"; a.k.a. "356 ARZ PAO"; a.k.a. "AO 356 ARZ"), Ter. Engels 1, Engels 413101, Russia; Organization Established Date 08 Dec 1997; Tax ID No. 64449042335 (Russia); Registration Number 1076449000870 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

35. JOINT STOCK COMPANY 810 AIRCRAFT REPAIR PLANT (a.k.a. "810 AIRCRAFT REPAIR PLANT"; a.k.a. "AO 810 ARZ"), Ul. Vertoletnaya D.1, Chita 672045, Russia; Organization Established Date 10 Aug 1995; Tax ID No. 7536080716 (Russia); Registration Number 1077536006118 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

36. JOINT STOCK COMPANY HELICOPTER SERVICE COMPANY (a.k.a. "AO VSK"; a.k.a. "HELICOPTER SERVICE COMPANY"; a.k.a. "VSK PAO"), Ul. Bolshaya Pionerskaya D. 1, Moscow 115054, Russia; Organization Established Date 17 Feb 2003; Tax ID No. 7704252960 (Russia); Registration Number 1037704005041 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

37. JOINT STOCK COMPANY KAZAN HELICOPTERS (a.k.a. AO KAZANSKII VERTOLETNYI ZAVOD; a.k.a. KAZAN HELICOPTERS; a.k.a. KAZANSKI VERTOLETNY ZAVOD AO), Ul. Tsetevskaya D. 14, Kazan 420085, Russia; Organization Established Date 1993; Tax ID No. 1656002652 (Russia); Registration Number 1021603881683 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

38. JOINT STOCK COMPANY KUMERTAU AVIATION PRODUCTION ENTERPRISE (a.k.a. KUMERTAU AVIATION PRODUCTION ENTERPRISE; a.k.a. "AO KUMAPP"; a.k.a. "JSC KUMAPE"), Ul. Novozarinskaya D. 15 A, Kumertau 453300, Russia; Organization Established Date 09 Jul 1992; Tax ID No. 0262016287 (Russia); Registration Number 1080262000609 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

39. JOINT STOCK COMPANY NATIONAL HELICOPTER CENTER MIL AND KAMOV (f.k.a. JOINT STOCK COMPANY MIL MOSCOW HELICOPTER PLANT; a.k.a. JOINT STOCK COMPANY NATIONAL HELICOPTER CENTER MIL & KAMOV), 1, Bolshaya Pionerskaya, Moscow 115054, Russia; Organization Established Date 1947; Tax ID No. 7718016666 (Russia); Registration Number 1027739032969 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

40. JOINT STOCK COMPANY PROGRESS ARSENYEV AVIATION COMPANY (a.k.a. JSC AAC PROGRESS; a.k.a. PROGRESS ARSENYEV AVIATION COMPANY; a.k.a. "PROGRESS AO"), Pl. Lenina D. 5, Arsenyev 692335, Russia; Organization Established Date 1936; Tax ID No. 2501002394 (Russia); Registration Number 1022500510350 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

41. JOINT STOCK COMPANY REDUCTOR – PM (a.k.a. AO REDUKTOR-PM; a.k.a. JSC REDUCTOR - PM), Pr-Kt Komsomolskii D. 93, Perm 614990, Russia; Organization Established Date 31 Aug 1995; Tax ID No. 5948017501 (Russia); Registration Number 1025902394385 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

42. JOINT STOCK COMPANY STUPINO ENGINEERING PRODUCTIVE ENTERPRISE (a.k.a. STUPINO ENGINEERING PRODUCTION ENTERPRISE; a.k.a. STUPINO MACHINE PRODUCTION PLANT; a.k.a. "SMPP AO"), 42 Ulitsa Akademika Belova, Stupino 142800, Russia; Organization Established Date 1948; Tax ID No. 5045001885 (Russia); Registration Number 1025005917419 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

43. JOINT STOCK COMPANY ULAN-UDE AVIATION PLANT (a.k.a. ULAN-UDE AVIATION PLANT; a.k.a. "AO U-UAZ"), Ul. Khorinskaya D. 1, Ulan-Ude 670009, Russia; Organization Established Date 28 Feb 1994; Tax ID No. 0323018510 (Russia); Registration Number 1020300887793 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

44. LIMITED LIABILITY COMPANY CENTER OF PURCHASES AND LOGISTICS OF THE HELICOPTER INDUSTRY (a.k.a. "TSZL VI OOO"), Per. 3-I Kotelnicheskii D. 6, Str. 1, Moscow 115172, Russia; Organization Established Date 20 Oct 2009; Tax ID No. 7731636010 (Russia); Registration Number 1097746637779 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

45. OBSHCHESTVO S OGRANICHENNOI OTVETSVENNOSTYU VR-RESURS (a.k.a. "VR - RESURS OOO"), Ter. Letno-Ispytatelnyi Kompleks, VL 1, Shchelkovo 141103, Russia; Ul. Lenina D. 11, Shchelkovo 141103, Russia; Organization Established Date 01 Aug 2008; Tax ID No. 5027138478 (Russia); Registration Number 1085027009572 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

46. ROSTOV HELICOPTER PRODUCTION COMPLEX (a.k.a. ROSTOVSKIY VERTOLETNYI PROIZVODSTVENNYI KOMPLEKS; a.k.a. ROSTVERTOL PAO; a.k.a. ROSTVERTOL PJSC; a.k.a. ROSTVERTOL PUBLIC JOINT STOCK COMPANY), Ul. Novatorov D. 5, Rostov-Na-Donu 344038, Russia; Organization Established Date 01 Jul 1939; Tax ID No. 6161021690 (Russia); Registration Number 1026102899228 (Russia) [RUSSIA-EO14024] (Linked To: VERTOLETY ROSSII AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Vertolety Rossii AO, a person whose property and interests are blocked pursuant to E.O. 14024.

47. JSC NPO HIGH PRECISION SYSTEMS (Cyrillic: АО НПО ВЫСОКОТОЧНЫЕ КОМПЛЕКСЫ) (a.k.a. AKTSIONERNOE OBSHCHESTVO NPO VYSOKOTOCHNYE KOMPLEKSY; a.k.a. HIGH PRECISION WEAPONS JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ASSOCIATION; a.k.a. JSC NPO VYSOKOTOCHNYE KOMPLEKSY; a.k.a. NPO VYSOKOTOCHNYE KOMPLEKSY, AO), 21 str. 1, bulvar Gogolevski, Moscow 119019, Russia; 7 Kievskaya Str., Moscow 121059, Russia; Executive Order 13662 Directive Determination - Subject to Directive 3; Organization Established Date 12 Feb 2009; Registration ID 1097746068012 (Russia); Tax ID No. 7704721192 (Russia); Government Gazette Number 60390527 (Russia); For more information on directives, please visit the following link: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives> [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: ROSTEC).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

48. NPK TEKHMAH OAO (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO-PROIZVODSTVENNY KONTSEKRN TEKHNologii MASHINOSTROENIYA; a.k.a. JOINT STOCK COMPANY SCIENTIFIC INDUSTRIAL CONCERN MANUFACTURING ENGINEERING; a.k.a. JSC SPC TECHMASH; a.k.a. OJSC MACHINE ENGINEERING TECHNOLOGIES; a.k.a. SCIENTIFIC INDUSTRIAL CONCERN MANUFACTURING ENGINEERING OJSC), d. 58 str. 4 shosse Leningradskoe, Moscow 125212, Russia; Ul. Bolshaya Tatarskaya D. 35, Str. 5, Moscow 115184, Russia; Executive Order 13662 Directive Determination - Subject to Directive 3; Organization Established Date 06 Apr 2011; Registration ID 1117746260477 (Russia); Tax ID No. 7743813961 (Russia); Government Gazette Number 91420386 (Russia); For more information on directives, please visit the following link: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives> [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: ROSTEC).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

Dated: March 24, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control,  
U.S. Department of the Treasury.*

[FR Doc. 2022-06836 Filed 3-30-22; 8:45 am]

**BILLING CODE 4810-AL-C**

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## **DEPARTMENT OF THE TREASURY**

### **Office of Foreign Assets Control**

#### **Notice of OFAC Sanctions Action**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

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**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names

one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date.

**FOR FURTHER INFORMATION CONTACT:**

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for

Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

**SUPPLEMENTARY INFORMATION:**

#### **Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website ([www.treasury.gov/ofac](http://www.treasury.gov/ofac)).

#### **Notice of OFAC Action**

On March 25, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanction's authority listed below.

**BILLING CODE 4810-AL-P**

**Individuals**

1. MUSA, Abdurrahman Ado (Arabic: عبدالرحمن ادو موسى), Abu Dhabi, United Arab Emirates; DOB 23 Apr 1984; POB Nigeria; nationality Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 170211735 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. ADAMU, Salihu Yusuf (Arabic: صالح يوسف ادامو) (a.k.a. ADAMU, Salih Yusuf), Abu Dhabi, United Arab Emirates; DOB 23 Aug 1990; POB Nigeria; nationality Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A07038778 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. YUSUF, Bashir Ali (Arabic: بشير علي يوسف); DOB 07 Aug 1984; POB Nigeria; nationality Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A06077522 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. ISA, Muhammed Ibrahim (Arabic: محمد ابراهيم عيسى), Abu Dhabi, United Arab Emirates; DOB 01 Jan 1989; POB Nigeria; nationality Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A06125000 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. MUHAMMAD, Surajo Abubakar (Arabic: سوراجو ابو بكر محمد) (a.k.a. MUHAMMAD, Surajo Abu Bakr), Abu Dhabi, United Arab Emirates; DOB 03 Jul 1979; POB Nigeria; nationality

Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A06290994 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. ALHASSAN, Ibrahim Ali (Arabic: ابراهيم علي الحسن), Abu Dhabi, United Arab Emirates; DOB 31 Jan 1981; POB Nigeria; nationality Nigeria; citizen Nigeria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A04687854 (Nigeria) (individual) [SDGT] (Linked To: BOKO HARAM).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BOKO HARAM, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: March 25, 2022.

**Andrea M. Gacki**,  
Director, Office of Foreign Assets Control,  
U.S. Department of the Treasury.

[FR Doc. 2022-06768 Filed 3-30-22; 8:45 am]

BILLING CODE 4810-AL-C

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names

of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. **DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

#### FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions

Compliance & Evaluation, tel.: 202-622-2490.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

##### Notice of OFAC Actions

On March 24, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

**Individuals:**

1. GADZHIYEV, Abdulkhakim Kutbudinovich (Cyrillic: ГАДЖИЕВ, Абдулхаким Кутбудинович), Russia; DOB 13 Feb 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. SHKHAGOSHEV, Adalbi Lyulevich (Cyrillic: ШХАГОШЕВ, Адальби Люлевич), Russia; DOB 06 Jun 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. METSHIN, Aidar Raisovich (Cyrillic: МЕТШИН, Айдар Раисович), Russia; DOB 27 Aug 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. FARRAKHOV, Airat Zakievich (Cyrillic: ФАРРАХОВ, Айрат Закиевич), Russia; DOB 17 Feb 1968; nationality Russia; Gender Male; Member of the



State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. DOGAYEV, Akhmed Shamkhanovich (Cyrillic: ДОГАЕВ, Ахмед Шамханович), Russia; DOB 18 Aug 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. DIDENKO, Alexey Nikolayevich (Cyrillic: ДИДЕНКО, Алексей Николаевич), Russia; DOB 30 Mar 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

7. ZHURAVLYEV, Alexey Aleksandrovich (Cyrillic: ЖУРАВЛЕВ, Алексей Александрович), Russia; DOB 30 Jun 1962; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. SITNIKOV, Alexey Vladimirovich (Cyrillic: СИТНИКОВ, Алексей Владимирович), Russia; DOB 19 Jun 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. GOVYRIN, Alexey (Cyrillic: ГОВЫРИН, Алексей), Russia; DOB 26 May 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

10. YEZUBOV, Alexey Petrovich (Cyrillic: ЕЗУБОВ, Алексей Петрович), Russia; DOB 10 Feb 1948; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

11. ARSHINOVA, Alena Igorevna (Cyrillic: АРШИНОВА, Алёна Игоревна), Russia; DOB 03 Mar 1985; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

12. YUSHCHENKO, Alexander Andreyevich (Cyrillic: ЮЩЕНКО, Александр Андреевич), Russia; DOB 19 Nov 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

13. TERYTYEV, Alexander Vasilyevich (Cyrillic: ТЕРЕНТЬЕВ, Александр Васильевич), Russia; DOB 01 Jan 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

14. REMEZKOV, Alexander Aleksandrovich (Cyrillic: РЕМЕЗКОВ, Александр Александрович), Russia; DOB 07 Apr 1962; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

15. AKSENENKO, Alexander Sergeyevich (Cyrillic: АКСЕНЕНКО, Александр Сергеевич), Russia; DOB 08 Mar 1986; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

16. YAKUBOVSKY, Alexander Vladimirovich (Cyrillic: ЯКУБОВСКИЙ, Александр Владимирович), Russia; DOB 07 May 1985; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

17. SHCHERBAKOV, Alexander Vladimirovich (Cyrillic: ЩЕРБАКОВ, Александр Владимирович), Russia; DOB 12 May 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

18. TETERDINKO, Alexander Pavlovich (Cyrillic: ТЕТЕРДИНКО, Александр Павлович), Russia; DOB 20 Nov 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

19. SPIRIDONOV, Alexander Yurevich (Cyrillic: СПИРИДОНОВ, Александр Юрьевич), Russia; DOB 03 Jan 1989; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

20. SKACHKOV, Alexander Anatolevich (Cyrillic: СКАЧКОВ, Александр Анатольевич), Russia; DOB 21 Nov 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

21. SAMOKUTYAEV, Alexander Mikhailovich (Cyrillic: САМОКУТЯЕВ, Александр Михайлович), Russia; DOB 13 Mar 1970; nationality Russia;

Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

22. BORISSOV, Alexander Aleksandrovich (Cyrillic: БОРИСОВ, Александр Александрович), Russia; DOB 17 Aug 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

23. DROZDOV, Alexander Sergeyevich (Cyrillic: ДРОЗДОВ, Александр Сергеевич), Russia; DOB 01 Nov 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

24. ILTYAKOV, Alexander Vladimirovich (Cyrillic: ИЛТЯКОВ, Александр Владимирович), Russia; DOB 09 Oct 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

25. KOGAN, Alexander Borisovich (Cyrillic: КОГАН, Александр Борисович), Russia; DOB 26 Feb 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

26. KOZLOVSKY, Alexander Nikolayevich (Cyrillic: КОЗЛОВСКИЙ, Александр Николаевич), Russia; DOB 05 May 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

27. MAZHUGA, Alexander Georgiyevich (Cyrillic: МАЖУГА, Александр Георгиевич), Russia; DOB 06 Aug 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

28. MAXIMOV, Alexander Aleksandrovich (Cyrillic: МАКСИМОВ, Александр Александрович), Russia; DOB 15 Nov 1946; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

29. PROKOPYEV, Alexander Sergeyevich (Cyrillic: ПРОКОПЬЕВ, Александр Сергеевич), Russia; DOB 05 Aug 1986; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

30. RUMYANTSEV, Alexander Grigoryevich (Cyrillic: РУМЯНЦЕВ, Александр Григорьевич), Russia; DOB 12 Feb 1947; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

31. KORNIYENKO, Alexey Viktorovich (Cyrillic: КОРНИЕНКО, Алексей Викторович), Russia; DOB 22 Jul 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

32. CHERNYAK, Alexey Yuryevich (Cyrillic: ЧЕРНЯК, Алексей Юрьевич), Russia; DOB 27 Aug 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

33. VELLER, Alexey Borisovich (Cyrillic: ВЕЛЛЕР, Алексей Борисович), Russia; DOB 09 Jan 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

34. KANAYEV, Alexey Valerianovich (Cyrillic: КАНАЕВ, Алексей Валерианович), Russia; DOB 30 Sep 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

35. LAVRINENKO, Alexey Fodorovich (Cyrillic: ЛАВРИНЕНКО, Алексей Фёдорович), Russia; DOB 20 Aug 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

36. KOGOGINA, Alfia Gumarovna (Cyrillic: КОГОГИНА, Альфия Гумаровна), Russia; DOB 22 Feb 1968; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

37. SALAEVA, Alla Leonidovna (Cyrillic: САЛАЕВА, Алла Леонидовна), Russia; DOB 14 Sep 1979; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

38. VORONOVSKIY, Anatoliy (Cyrillic: ВОРОНОВСКИЙ, Анатолий), Russia; DOB 28 Dec 1966; nationality Russia; Gender Male; Member of the State

Duma of the Federal Assembly of the Russian Federation (individual)  
[RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

39. LESUN, Anatoliy Fodorovich (Cyrillic: ЛЕСУН, Анатолий Фёдорович), Russia; DOB 27 Feb 1959; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

40. BIFOV, Anatoly Zhamalovich (Cyrillic: БИФОВ, Анатолий Жамалович), Russia; DOB 07 Jan 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

41. AKSAKOV, Anatoly Gennadyevich (Cyrillic: АКСАКОВ, Анатолий Геннадьевич), Russia; DOB 28 Nov 1957; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

42. WASSERMAN, Anatoly Aleksandrovich (Cyrillic: ВАССЕРМАН, Анатолий Александрович), Russia; DOB 09 Dec 1952; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

43. LISITSYN, Anatoly Ivanovich (Cyrillic: ЛИСИЦЫН, Анатолий Иванович), Russia; DOB 26 Jun 1947; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

44. VYBORNYY, Anatoly Borisovich (Cyrillic: ВЫБОРНЫЙ, Анатолий Борисович), Russia; DOB 08 Jun 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

45. KARPOV, Anatoly Yevgenyevich (Cyrillic: КАРПОВ, Анатолий Евгеньевич), Russia; DOB 23 May 1951; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

46. ALEKHIN, Andrey Anatolyevich (Cyrillic: АЛЕХИН, Андрей Анатольевич), Russia; DOB 09 Feb 1959; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

47. KUZNETSOV, Andrey Anatolyevich (Cyrillic: КУЗНЕЦОВ, Андрей Анатольевич), Russia; DOB 29 May 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

48. TRIFONOV, Andrey Fedorovich (Cyrillic: ТРИФОНОВ, Андрей Фёдорович), Russia; DOB 01 May 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

49. ALSHEVSKIY, Andrey Gennadyevich (Cyrillic: АЛЬШЕВСКИХ, Андрей Геннадьевич), Russia; DOB 14 May 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].



Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

50. ANIKEYEV, Andrey Anatolyevich (Cyrillic: АНИКЕЕВ, Андрей Анатольевич), Russia; DOB 16 Dec 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

51. VOROBEV, Andrey Viktorovich (Cyrillic: ВОРОБЬЁВ, Андрей Викторович), Russia; DOB 24 Jul 1985; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

52. GIMBATOV, Andrey Petrovich (Cyrillic: ГИМБАТОВ, Андрей Петрович), Russia; DOB 19 Jul 1979; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

53. GOROKHOV, Andrey Yuryevich (Cyrillic: ГОРОХОВ, Андрей Юрьевич), Russia; DOB 13 Jan 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

54. GURULEV, Andrey Viktorovich (Cyrillic: ГУРУЛЁВ, Андрей Викторович), Russia; DOB 16 Oct 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

55. DOROSHENKO, Andrey Nikolayevich (Cyrillic: ДОРОШЕНКО, Андрей Николаевич), Russia; DOB 10 Mar 1977; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

56. ISAEV, Andrey Konstantinovich (Cyrillic: ИСАЕВ, Андрей Константинович), Russia; DOB 01 Oct 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

57. КАРТАПОЛОВ, Andrey Valeriyevich (Cyrillic: КАРТАПОЛОВ, Андрей Валериевич), Russia; DOB 09 Nov 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

58. KOLESNIK, Andrey Ivanovich (Cyrillic: КОЛЕСНИК, Андрей Иванович), Russia; DOB 26 Feb 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

59. MARKOV, Andrey Pavlovich (Cyrillic: МАРКОВ, Андрей Павлович), Russia; DOB 30 Jun 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

60. SHIPULIN, Anton Vladimirovich (Cyrillic: ШИПУЛИН, Антон Владимирович), Russia; DOB 21 Aug 1987; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

61. BASANSKY, Anton Aleksandrovich (Cyrillic: БАШАНСКИЙ, АНТОН Александрович), Russia; DOB 09 Jul 1987; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

62. GETTA, Anton Aleksandrovich (Cyrillic: ГЕТТА, АНТОН Александрович), Russia; DOB 29 Apr 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

63. GORELKIN, Anton Vadimovich (Cyrillic: ГОРЕЛКИН, АНТОН Вадимович), Russia; DOB 22 Dec 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

64. KRASNOSHTANOV, Anton Alekseyevich (Cyrillic: КРАСНОШТАНОВ, АНТОН Алексеевич), Russia; DOB 10 Jun 1986; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

65. NEMKIN, Anton Igorevich (Cyrillic: НЕМКИН, АНТОН Игоревич), Russia; DOB 22 Aug 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

66. GLAZKOVA, Anzhelika Yegorovna (Cyrillic: ГЛАЗКОВА, АНЖЕЛИКА Егоровна), Russia; DOB 28 Dec 1968; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

67. SVISTUNOV, Arkady Nikolayevich (Cyrillic: СВИСТУНОВ, Аркадий Николаевич), Russia; DOB 28 Apr 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

68. PONOMAREV, Arkady Nikolayevich (Cyrillic: ПОНОМАРЁВ, Аркадий Николаевич), Russia; DOB 16 May 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

69. ТАУМАЗОВ, Artur Borisovich (Cyrillic: ТАЙМАЗОВ, Артур Борисович), Russia; DOB 20 Jul 1979; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

70. ПРОКОФЬЕВ, Artyom Vyacheslavovich (Cyrillic: ПРОКОФЬЕВ, Артём Вячеславович), Russia; DOB 31 Dec 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

71. ТУРОВ, Artyom Viktorovich (Cyrillic: ТУРОВ, Артём Викторович), Russia; DOB 01 Mar 1984; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

72. БИЧАЕВ, Artyom Aleksandrovich (Cyrillic: БИЧАЕВ, Артём Александрович), Russia; DOB 04 Apr 1990; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

73. SARYGLAR, Aydyn Nikolayevich (Cyrillic: САРЫГЛАР, Айдын Николаевич), Russia; DOB 22 Feb 1988; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

74. YAGAFAROV, Azat Ferdinandovich (Cyrillic: ЯГАФАРОВ, Азат Фердинандович), Russia; DOB 04 Apr 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

75. BASHANKAYEV, Badma Nikolayevich (Cyrillic: БАШАНКАЕВ, Бадма Николаевич), Russia; DOB 16 Jun 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

76. AGAYEV, Bekkhan Vakhayevich (Cyrillic: АГАЕВ, Бекхан Вахаевич), Russia; DOB 29 Mar 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

77. BARAKHOYEV, Bekkhan Abdulkhamidovich (Cyrillic: БАРАХОЕВ, Бекхан Абдулхамидович), Russia; DOB 01 Aug 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

78. KOMOTSKY, Boris Olegovich (Cyrillic: КОМОЦКИЙ, Борис Олегович), Russia; DOB 31 Jan 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

79. IVANYUZHENKOV, Boris Viktorovich (Cyrillic: ИВАНЮЖЕНКОВ, Борис Викторович), Russia; DOB 28 Feb 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

80. CHERNYSHOV, Boris Aleksandrovich (Cyrillic: ЧЕРНЫШОВ, Борис Александрович), Russia; DOB 25 Jun 1991; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

81. PAVKIN, Boris Romanovich (Cyrillic: ПАЙКИН, Борис Романович), Russia; DOB 26 Mar 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

82. GLADKIKH, Boris Mikhaylovich (Cyrillic: ГЛАДКИХ, Борис Михайлович), Russia; DOB 16 Feb 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

83. BORODAY, Alexander Yuryevich (Cyrillic: БОРОДАЙ, Александр Юрьевич) (a.k.a. BORODAI, Aleksandr), Russia; DOB 25 Jul 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [UKRAINE-EO13660] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

84. BESSARABOV, Daniil Vladimirovich (Cyrillic: БЕССАРАБОВ, Даниил Владимирович), Russia; DOB 09 Jul 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

85. PARFYONOV, Denis Andreyevich (Cyrillic: ПАРФЕНОВ, Денис Андреевич), Russia; DOB 22 Sep 1987; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

86. KRAVCHENKO, Denis Borisovich (Cyrillic: КРАВЧЕНКО, Денис Борисович), Russia; DOB 17 Apr 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

87. MAIDANOV, Denis (Cyrillic: МАЙДАНОВ, Денис), Russia; DOB 17 Feb 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

88. GILMUTDINOV, Dinar Zagitovich (Cyrillic: ГИЛЬМУТДИНОВ, Динар Загитович), Russia; DOB 10 Aug 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

89. LAMEYKIN, Dmitriy Viktorovich (Cyrillic: ЛАМЕЙКИН, Дмитрий Викторович), Russia; DOB 27 Feb 1977; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

90. LOTSMANOV, Dmitriy Nikolayevich (Cyrillic: ЛОЦМАНОВ, Дмитрий Николаевич), Russia; DOB 02 Mar 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

91. ПОГОРЕЛЫЙ, Dmitriy Viktorovich (Cyrillic: ПОГОРЕЛЫЙ, Дмитрий Викторович), Russia; DOB 04 Oct 1977; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

92. SVISHCHEV, Dmitry Aleksandrovich (Cyrillic: СВИЩЕВ, Дмитрий Александрович), Russia; DOB 22 May 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

93. GUSEV, Dmitry Gennadyevich (Cyrillic: ГУСЕВ, Дмитрий Геннадьевич), Russia; DOB 23 Jul 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

94. KUZNETSOV, Dmitry Vadimovich (Cyrillic: КУЗНЕЦОВ, Дмитрий Вадимович), Russia; DOB 05 Mar 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.



95. SAVELYEV, Dmitry Ivanovich (Cyrillic: САВЕЛЬЕВ, Дмитрий Иванович), Russia; DOB 25 May 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

96. ISLAMOVI, Dmitry Viktorovich (Cyrillic: ИСЛАМОВ, Дмитрий Викторович), Russia; DOB 05 Dec 1977; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

97. KADENKOV, Dmitry Mikhaylovich (Cyrillic: КАДЕНКОВ, Дмитрий Михайлович), Russia; DOB 03 May 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

98. PIROG, Dmitry Yuryevich (Cyrillic: ПИРОГ, Дмитрий Юрьевич), Russia; DOB 27 Jun 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

99. GASANOV, Dzhamaladin Nabiyevich (Cyrillic: ГАСАНОВ, Джамаладин Набиевич), Russia; DOB 05 Aug 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

100. KHARCHENKO, Ekaterina Vladimirovna (Cyrillic: ХАРЧЕНКО, Екатерина Владимировна), Russia; DOB 11 Aug 1977; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

101. STENYAKINA, Ekaterina Petrovna (Cyrillic: СТЕНЯКИНА, Екатерина Петровна), Russia; DOB 04 May 1985; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

102. TSUNAEVA, Elena Moiseevna (Cyrillic: ЦУНАЕВА, Елена Моисеевна), Russia; DOB 13 Jan 1969; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

103. AITKULOVA, Elvira Rinatovna (Cyrillic: АИТКУЛОВА, Эльвира Ринатовна), Russia; DOB 19 Aug 1973; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

104. VALEEV, Ernest Abdulovich (Cyrillic: ВАЛЕЕВ, Эрнест Абдулович), Russia; DOB 07 Apr 1950; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

105. NIFANTIEV, Evgeniy Olegovich (Cyrillic: НИФАНТЬЕВ, Евгений Олегович), Russia; DOB 14 Sep 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

106. PERVYSHOV, Evgeny Alekseyevich (Cyrillic: ПЕРВЫШОВ, Евгений Алексеевич), Russia; DOB 04 May 1976; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

107. TUMUSOV, Fedot Semonovich (Cyrillic: ТУМУСОВ, Федот Семёнович), Russia; DOB 30 Jun 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

108. KHOVANSKAYA, Galina Petrovna (Cyrillic: ХОВАНСКАЯ, Галина Петровна), Russia; DOB 23 Aug 1943; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

109. DANCHIKOVA, Galina Innokentyevna (Cyrillic: ДАНЧИКОВА, Галина Иннокентьевна), Russia; DOB 13 Aug 1954; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

110. SKLYAR, Gennadiy Ivanovich (Cyrillic: СКЛЯР, Геннадий Иванович), Russia; DOB 17 May 1952; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

111. PANIN, Gennadiy Olegovich (Cyrillic: ПАНИН, Геннадий Олегович), Russia; DOB 13 Jun 1981; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

112. SEMIGIN, Gennady Yuryevich (Cyrillic: СЕМИГИН, Геннадий Юрьевич), Russia; DOB 23 Mar 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

113. KAMNEV, Georgy Petrovich (Cyrillic: КАМНЕВ, Георгий Петрович), Russia; DOB 05 Jan 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

114. KARLOV, Georgy Aleksandrovich (Cyrillic: КАРЛОВ, Георгий Александрович), Russia; DOB 04 Jan 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

115. ANIKEEV, Grigory Viktorovich (Cyrillic: АНИКЕЕВ, Григорий Викторович), Russia; DOB 28 Feb 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

116. ANANSKIKH, Igor Aleksandrovich (Cyrillic: АНАНСКИХ, Игорь Александрович), Russia; DOB 06 Sep 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

117. SHUBIN, Igor Nikolayevich (Cyrillic: ШУБИН, Игорь Николаевич), Russia; DOB 20 Dec 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

118. ANTROPENKO, Igor Aleksandrovich (Cyrillic: АНТРОПЕНКО, Игорь Александрович), Russia; DOB 10 Dec 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

119. IGOSHIN, Igor Nikolayevich (Cyrillic: ИГОШИН, Игорь Николаевич), Russia; DOB 11 Dec 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

120. KASTYUKEVICH, Igor Yuryevich (Cyrillic: КАСТЮКЕВИЧ, Игорь Юрьевич), Russia; DOB 06 Dec 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

121. RUDENSKY, Igor Nikolayevich (Cyrillic: РУДЕНСКИЙ, Игорь Николаевич), Russia; DOB 11 Sep 1962; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

122. GILMUTDINOV, Ildar Irekovich (Cyrillic: ГИЛЬМУТДИНОВ, Илдар Ирекович), Russia; DOB 03 Sep 1962; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

123. VOLFSO, Ilya Svetoslavovich (Cyrillic: ВОЛЬФСОН, Илья Светославович), Russia; DOB 08 Jun 1981; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

124. BOGUSLAWSKI, Irek Borisovich (Cyrillic: БОГУСЛАВСКИЙ, Ирек Борисович), Russia; DOB 09 Sep 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

125. FILATOVA, Irina Anatolyevna (Cyrillic: ФИЛАТОВА, Ирина Анатольевна), Russia; DOB 08 Aug 1978; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

126. BELYKH, Irina Viktorovna (Cyrillic: БЕЛЫХ, Ирина Викторовна), Russia; DOB 16 Aug 1964; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

127. IVENSKIKH, Irina Valentinovna (Cyrillic: ИВЕНСКИХ, Ирина Валентиновна), Russia; DOB 22 Jul 1972; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

128. PANKINA, Irina Aleksandrovna (Cyrillic: ПАНЬКИНА, Ирина Александровна), Russia; DOB 08 Mar 1986; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

129. RODNINA, Irina Konstantinovna (Cyrillic: РОДНИНА, Ирина Константиновна), Russia; DOB 12 Sep 1949; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

130. BABICH, Ivan Nikolayevich (Cyrillic: БАБИЧ, Иван Николаевич), Russia; DOB 02 Sep 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

131. MUSATOV, Ivan Mikhaylovich (Cyrillic: МУСАТОВ, Иван Михайлович), Russia; DOB 14 Feb 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

132. SUKHAREV, Ivan Konstantinovich (Cyrillic: СУХАРЕВ, Иван Константинович), Russia; DOB 10 Jun 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

133. DEMCHENKO, Ivan Ivanovich (Cyrillic: ДЕМЧЕНКО, Иван Иванович), Russia; DOB 27 Sep 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

134. KVITKA, Ivan Ivanovich (Cyrillic: КВИТКА, Иван Иванович), Russia; DOB 04 May 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

135. LOOR, Ivan Ivanovich (Cyrillic: ЛООР, Иван Иванович), Russia; DOB 11 Dec 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

136. PANESH, Kaplan Mugdinovich (Cyrillic: ПАНЕШ, Каплан Мугдинович), Russia; DOB 04 Sep 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

137. АВАКАРОВ, Khizri Magomedovich (Cyrillic: АВАКАРОВ, Хизри Магомедович), Russia; DOB 28 Jun 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

138. ЗАХАРОВ, Konstantin Yuryevich (Cyrillic: ЗАХАРОВ, Константин Юрьевич), Russia; DOB 31 Mar 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

139. ТУТОВА, Larisa Nikolayevna (Cyrillic: ТУТОВА, Лариса Николаевна), Russia; DOB 18 Oct 1969; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

140. СИМАНОВСКИЙ, Leonid Jakovlevitch (Cyrillic: СИМАНОВСКИЙ, Леонид Яковлевич), Russia; DOB 19 Jul 1949; nationality Russia; Gender Male;



Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

141. BABASHOV, Leonid Ivanovich (Cyrillic: БАБАШОВ, Леонид Иванович), Russia; DOB 31 Jan 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

142. IVLEV, Leonid Grigoryevich (Cyrillic: ИВЛЕВ, Леонид Григорьевич), Russia; DOB 01 May 1953; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

143. OGUL, Leonid Anatolyevich (Cyrillic: ОГУЛЬ, Леонид Анатольевич), Russia; DOB 26 Oct 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

144. LUGOVOY, Andrey Konstantinovich (Cyrillic: ЛУГОВОЙ, Андрей Константинович) (a.k.a. LUGOVOI, Andrei Konstantinovich), Russia; DOB 19 Sep 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [MAGNIT] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

145. IVANOV, Maksim Yevgenyevich (Cyrillic: ИВАНОВ, Максим Евгеньевич), Russia; DOB 23 May 1987; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

146. DROBOT, Maria Vladimirovna (Cyrillic: ДРОБОТ, Мария Владимировна), Russia; DOB 21 Mar 1982; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

147. PRUSAKOVA, Maria Nikolayevna (Cyrillic: ПРУСАКОВА, Мария Николаевна), Russia; DOB 04 Sep 1983; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

148. BUTINA, Maria Valeryevna (Cyrillic: БУТИНА, Мария Валерьевна), Russia; DOB 10 Nov 1988; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

149. VASILKOVA, Maria Viktorovna (Cyrillic: ВАСИЛЬКОВА, Мария Викторовна), Russia; DOB 13 Feb 1978; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

150. IVANOV, Maxim Anatolyevich (Cyrillic: ИВАНОВ, Максим Анатольевич), Russia; DOB 24 Nov 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

151. TARASENKO, Michail Vasilevich (Cyrillic: ТАРАСЕНКО, Михаил Васильевич), Russia; DOB 21 Nov 1947; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

152. AVDEYEV, Mikhail Yuryevich (Cyrillic: АВДЕЕВ, Михаил Юрьевич), Russia; DOB 06 Mar 1977; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

153. MATVEYEV, Mikhail Nikolayevich (Cyrillic: МАТВЕЕВ, Михаил Николаевич), Russia; DOB 13 May 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

154. SHCHAPOV, Mikhail Viktorovich (Cyrillic: ЩАПОВ, Михаил Викторович), Russia; DOB 20 Sep 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

155. DELYAGIN, Mikhail Gennadyevich (Cyrillic: ДЕЛЯГИН, Михаил Геннадьевич), Russia; DOB 18 Mar 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

156. TERYTYEV, Mikhail Borisovich (Cyrillic: ТЕРЕНТЬЕВ, Михаил Борисович), Russia; DOB 14 May 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

157. STARSHINOV, Mikhail Yevgenyevich (Cyrillic: СТАРШИНОВ, Михаил Евгеньевич), Russia; DOB 12 Dec 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

158. KIZEEV, Mikhail Vladimirovich (Cyrillic: КИЗЕЕВ, Михаил Владимирович), Russia; DOB 31 Mar 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

159. KISLYAKOV, Mikhail Leonidovich (Cyrillic: КИСЛЯКОВ, Михаил Леонидович), Russia; DOB 18 Nov 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

160. KUZMIN, Mikhail Vladimirovich (Cyrillic: КУЗЬМИН, Михаил Владимирович), Russia; DOB 05 Aug 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

161. ROMANOV, Mikhail Valentinovich (Cyrillic: РОМАНОВ, Михаил Валентинович), Russia; DOB 03 Nov 1984; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

162. GADZHIYEV, Murad Stanislavovich (Cyrillic: ГАДЖИЕВ, Мурад Станиславович), Russia; DOB 31 Jul 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

163. KHASANOV, Murat Ruslanovich (Cyrillic: ХАСАНОВ, Мурат Русланович), Russia; DOB 10 Dec 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

164. TATRIEV, Muslim Barisovich (Cyrillic: ТАТРИЕВ, Муслим Барисович), Russia; DOB 11 Jan 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

165. SHKOLKINA, Nadezhda Vasilyevna (Cyrillic: ШКОЛКИНА, Надежда Васильевна), Russia; DOB 12 May 1970; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

166. POLUYANOVA, Nataliya Vladimirovna (Cyrillic: ПОЛУЯНОВА, Наталия Владимировна), Russia; DOB 11 Mar 1981; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

167. KOSTENKO, Natalya Vasilyevna (Cyrillic: КОСТЕНКО, Наталья Васильевна), Russia; DOB 09 Aug 1980; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

168. NAZAROVA, Natalya Vasilyevna (Cyrillic: НАЗАРОВА, Наталья Васильевна), Russia; DOB 22 Dec 1953; nationality Russia; Gender Female;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

169. ORLOVA, Natalya Alekseyevna (Cyrillic: ОРЛОВА, Наталья Алексеевна), Russia; DOB 29 Aug 1969; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

170. CHAPLIN, Nikita Yuryevich (Cyrillic: ЧАПЛИН, Никита Юрьевич), Russia; DOB 28 Jul 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

171. KHARITONOV, Nikolay Mikhaylovich (Cyrillic: ХАРИТОНОВ, Николай Михайлович), Russia; DOB 30 Oct 1948; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

172. AREFYEV, Nikolay Vasilyevich (Cyrillic: АРЕФЬЕВ, Николай Васильевич), Russia; DOB 11 Mar 1949; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

173. IVANOV, Nikolay Nikolayevich (Cyrillic: ИВАНОВ, Николай Николаевич), Russia; DOB 17 Jan 1957; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

174. VASILYEV, Nikolay Ivanovich (Cyrillic: ВАСИЛЬЕВ, Николай Иванович), Russia; DOB 28 Mar 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

175. YEZERSKY, Nikolay Nikolayevich (Cyrillic: ЕЗЕРСКИЙ, Николай Николаевич), Russia; DOB 08 May 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

176. BURLYAYEV, Nikolay Petrovich (Cyrillic: БУРЛЯЕВ, Николай Петрович), Russia; DOB 03 Aug 1946; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

177. SHCHEGLOV, Nikolay Mikhaylovich (Cyrillic: ЩЕГЛОВ, Николай Михайлович), Russia; DOB 16 Mar 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

178. TSED, Nikolay Grigorevich (Cyrillic: ЦЕД, Николай Григорьевич), Russia; DOB 06 Jan 1959; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

179. ALEXEYENKO, Nikolay Nikolayevich (Cyrillic: АЛЕКСЕЕНКО, Николай Николаевич), Russia; DOB 29 Nov 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

180. BORTSOV, Nikolay Ivanovich (Cyrillic: БОРЦОВ, Николай Иванович), Russia; DOB 08 May 1945; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

181. BRYKIN, Nikolay Gavrilovich (Cyrillic: БРЫКИН, Николай Гаврилович), Russia; DOB 25 Nov 1959; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

182. BUDUYEV, Nikolay Robertovich (Cyrillic: БУДУЕВ, Николай Робертович), Russia; DOB 24 Mar 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

183. VALUEV, Nikolay Sergeyeovich (Cyrillic: ВАЛУЕВ, Николай Сергеевич), Russia; DOB 21 Aug 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

184. GONCHAROV, Nikolay Aleksandrovich (Cyrillic: ГОНЧАРОВ, Николай Александрович), Russia; DOB 13 Jan 1984; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

185. DOLUDA, Nikolay Aleksandrovich (Cyrillic: ДОЛУДА, Николай Александрович), Russia; DOB 10 Jun 1952; nationality Russia; Gender Male;



Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

186. NIKOLAEV, Nikolay Petrovich (Cyrillic: НИКОЛАЕВ, Николай Петрович), Russia; DOB 02 Apr 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

187. PANKOV, Nikolay Vasilyevich (Cyrillic: ПАНКОВ, Николай Васильевич), Russia; DOB 05 Jan 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

188. PETRUNIN, Nikolay Yuryevich (Cyrillic: ПЕТРУНИН, Николай Юрьевич), Russia; DOB 27 Feb 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

189. OSTANINA, Nina Aleksandrovna (Cyrillic: ОСТАНИНА, Нина Александровна), Russia; DOB 26 Dec 1955; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

190. NURBAGANDOV, Nurbagand (Cyrillic: НУРБАГАНДОВ, Нурбаганд), Russia; DOB 19 Mar 1957; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

191. FADINA, Oksana Nikolayevna (Cyrillic: ФАДИНА, Оксана Николаевна), Russia; DOB 03 Jul 1976; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

192. LEBEDEV, Oleg Aleksandrovich (Cyrillic: ЛЕБЕДЕВ, Олег Александрович), Russia; DOB 12 Oct 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

193. SMOLIN, Oleg Nikolayevich (Cyrillic: СМОЛИН, Олег Николаевич), Russia; DOB 10 Feb 1952; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

194. NILOV, Oleg Anatolyevich (Cyrillic: НИЛОВ, Олег Анатольевич), Russia; DOB 08 May 1962; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

195. SAVCHENKO, Oleg Vladimirovich (Cyrillic: САВЧЕНКО, Олег Владимирович), Russia; DOB 25 Oct 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

196. VALENCHUK, Oleg Dorianovich (Cyrillic: ВАЛЕНЧУК, Олег Дорианович), Russia; DOB 14 Sep 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

197. GARIN, Oleg Vladimirovich (Cyrillic: ГАРИН, Олег Владимирович), Russia; DOB 26 Dec 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

198. GOLIKOV, Oleg Aleksandrovich (Cyrillic: ГОЛИКОВ, Олег Александрович), Russia; DOB 21 Oct 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

199. DIMOV, Oleg Dmitriyevich (Cyrillic: ДИМОВ, Олег Дмитриевич), Russia; DOB 08 Mar 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

200. IVANINSKIY, Oleg Ivanovich (Cyrillic: ИВАНИНСКИЙ, Олег Иванович), Russia; DOB 05 Jun 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

201. KOLESNIKOV, Oleg Alekseyevich (Cyrillic: КОЛЕСНИКОВ, Олег Алексеевич), Russia; DOB 11 Sep 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

202. AMELCHENKOVA, Olga Nikolayevna (Cyrillic: АМЕЛЬЧЕНКОВА, Ольга Николаевна), Russia; DOB 05 Sep 1990; nationality Russia; Gender Female;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

203. ANUFRIYEVA, Olga Nikolayevna (Cyrillic: АНУФРИЕВА, Ольга Николаевна), Russia; DOB 18 Aug 1974; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

204. GERMANOVA, Olga Mikhaylovna (Cyrillic: ГЕРМАНОВА, Ольга Михайловна), Russia; DOB 26 Sep 1961; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

205. KOROBOVA, Olga Vladimirovna (Cyrillic: КОРОБОВА, Ольга Владимировна), Russia; DOB 15 Sep 1978; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

206. PILIPENKO, Olga Vasilyevna (Cyrillic: ПИЛИПЕНКО, Ольга Васильевна), Russia; DOB 04 Jan 1966; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

207. FEDYAEV, Pavel Mikhaylovich (Cyrillic: ФЕДЯЕВ, Павел Михайлович), Russia; DOB 31 Jul 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

208. SIMIGIN, Pavel Vladimirovich (Cyrillic: СИМИГИН, Павел Владимирович), Russia; DOB 26 Jul 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

209. КАЧКАЕВ, Pavel Rjurikovich (Cyrillic: КАЧКАЕВ, Павел Рюрикович), Russia; DOB 04 Oct 1951; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

210. АММОСОВ, Petr Revoldovich (Cyrillic: АММОСОВ, Петр Револьдович), Russia; DOB 22 Sep 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

211. МАРДАНШИН, Rafael Mirkhatimovich (Cyrillic: МАРДАНШИН, Рафаэль Мирхатимович), Russia; DOB 24 Dec 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

212. АСИМОВ, Rahim Azizboyevich (Cyrillic: АЗИМОВ, Рахим Азизбоевич), Russia; DOB 16 Aug 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

213. СУЛЕЙМАНОВ, Renat Ismailovich (Cyrillic: СУЛЕЙМАНОВ, Ренат Исмаилович), Russia; DOB 24 Dec 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

214. REZNIK, Vladislav Matusovich (Cyrillic: РЕЗНИК, Владислав Матусович), Moscow, Russia; DOB 17 May 1954; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

215. BATALOVA, Rima Akberdinovna (Cyrillic: БАТАЛОВА, Рима Акбердиновна), Russia; DOB 01 Jan 1964; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

216. UTYASHEVA, Rimma Amirovna (Cyrillic: УТЯШЕВА, Римма Амировна), Russia; DOB 03 Jan 1952; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

217. AYUPOV, Rinat Zaydulayevich (Cyrillic: АЮПОВ, Ринат Зайдулаевич), Russia; DOB 13 Aug 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

218. LYABIKHOV, Roman Mikhaylovich (Cyrillic: ЛЯБИХОВ, Роман Михайлович), Russia; DOB 07 May 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

219. TERYUSHKOV, Roman Igorevich (Cyrillic: ТЕРЮШКОВ, Роман Игоревич), Russia; DOB 20 Dec 1979; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

220. VODYANOV, Roman Mikhaylovich (Cyrillic: ВОДЯНОВ, Роман Михайлович), Russia; DOB 25 Nov 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

221. LYUBARSKIY, Roman Valeryevich (Cyrillic: ЛЮБАРСКИЙ, Роман Валерьевич), Russia; DOB 16 Jul 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

222. PTITSYN, Roman Viktorovich (Cyrillic: ПТИЦЫН, Роман Викторович), Russia; DOB 08 Sep 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

223. ROMANENKO, Roman Yuryevich (Cyrillic: РОМАНЕНКО, Роман Юрьевич), Russia; DOB 09 Aug 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

224. GADZHIYEV, Ruslan Gadzhiyevich (Cyrillic: ГАДЖИЕВ, Руслан Гаджиевич), Russia; DOB 29 Aug 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

225. LECHKHADZHIEV, Ruslan Abdulvakhievich (Cyrillic: ЛЕЧХАДЖИЕВ, Руслан Абдулвахиевич), Russia; DOB 02 Jul 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

226. KALIMULLIN, Rustam Galiullovič (Cyrillic: КАЛИМУЛЛИН, Рустам Галиуллович), Russia; DOB 02 Jan 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

227. SHARGUNOV, Sergey Aleksandrovich (Cyrillic: ШАРГУНОВ, Сергей Александрович), Russia; DOB 12 May 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

228. LEVCHENKO, Sergey Georgiyevich (Cyrillic: ЛЕВЧЕНКО, Сергей Георгиевич), Russia; DOB 02 Nov 1953; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

229. GAVRILOV, Sergey Anatolyevich (Cyrillic: ГАВРИЛОВ, Сергей Анатольевич), Russia; DOB 27 Jan 1966; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

230. PANTELEYEV, Sergey Mikhaylovich (Cyrillic: ПАНТЕЛЕЕВ, Сергей Михайлович), Russia; DOB 04 Jul 1951; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].



Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

231. OBUKHOV, Sergey Pavlovich (Cyrillic: ОБУХОВ, Сергей Павлович), Russia; DOB 05 Oct 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

232. KAZANKOV, Sergey Ivanovich (Cyrillic: КАЗАНКОВ, Сергей Иванович), Russia; DOB 09 Oct 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

233. KARGINOV, Sergey Genrikhovich (Cyrillic: КАРГИНОВ, Сергей Генрихович), Russia; DOB 05 Sep 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

234. LEONOV, Sergey Dmitriyevich (Cyrillic: ЛЕОНОВ, Сергей Дмитриевич), Russia; DOB 09 May 1983; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

235. KABYSHEV, Sergey Vladimirovich (Cyrillic: КАБЫШЕВ, Сергей Владимирович), Russia; DOB 04 Sep 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

236. YAKHNYUK, Sergey Vasilyevich (Cyrillic: ЯХНИУК, Сергей Васильевич), Russia; DOB 03 Jul 1962; nationality Russia; Gender Male; Member of the

State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

237. CHIZHOV, Sergey Viktorovich (Cyrillic: ЧИЖОВ, Сергей Викторович), Russia; DOB 16 Mar 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

238. ШЕРИКОВ, Sergey Vladimirovich (Cyrillic: ШЕРИКОВ, Сергей Владимирович), Russia; DOB 30 Jan 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

239. ТЕН, Sergey Yuryevich (Cyrillic: ТЕН, Сергей Юрьевич), Russia; DOB 25 Aug 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

240. СОЛОВЬЕВ, Sergey Anatolevich (Cyrillic: СОЛОВЬЕВ, Сергей Анатольевич), Russia; DOB 01 May 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

241. СОКОЛ, Sergey Mikhaylovich (Cyrillic: СОКОЛ, Сергей Михайлович), Russia; DOB 17 Dec 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

242. ALTUKHOV, Sergey Viktorovich (Cyrillic: АЛТУХОВ, Сергей Викторович), Russia; DOB 23 Feb 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

243. BIDONKO, Sergey Yuryevich (Cyrillic: БИДОНЬКО, Сергей Юрьевич), Russia; DOB 18 Aug 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

244. BOYARSKIY, Sergey Mikhaylovich (Cyrillic: БОЯРСКИЙ, Сергей Михайлович), Russia; DOB 24 Jan 1980; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

245. BURLAKOV, Sergey Vladimirovich (Cyrillic: БУРЛАКОВ, Сергей Владимирович), Russia; DOB 26 May 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

246. VEREMEENKO, Sergey Alekseyevich (Cyrillic: ВЕРЕМЕЕНКО, Сергей Алексеевич), Russia; DOB 26 Sep 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

247. KOLUNOV, Sergey Vladimirovich (Cyrillic: КОЛУНОВ, Сергей Владимирович), Russia; DOB 22 Mar 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

248. KOTKIN, Sergey Nikolayevich (Cyrillic: КОТКИН, Сергей Николаевич), Russia; DOB 11 Mar 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

249. KRIVONOSOV, Sergey Vladimirovich (Cyrillic: КРИВОНОСОВ, Сергей Владимирович), Russia; DOB 29 May 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

250. LISSOVSKI, Sergey Fodorovich (Cyrillic: ЛИСОВСКИЙ, Сергей Фёдорович), Russia; DOB 25 Apr 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

251. MOROZOV, Sergey Ivanovich (Cyrillic: МОРОЗОВ, Сергей Иванович), Russia; DOB 06 Sep 1959; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

252. PETROV, Sergey Valeriyevich (Cyrillic: ПЕТРОВ, Сергей Валериевич), Russia; DOB 19 Apr 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

253. SARALIYEV, Shamsail Yunusovich (Cyrillic: САРАЛИЕВ, Шамсаил Юнусович), Russia; DOB 05 Nov 1973; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

254. SKOCH, Andrei Vladimirovich (Cyrillic: СКОЧ, Андрей Владимирович) (a.k.a. SKOCH, Andrey), Russia; DOB 30 Jan 1966; POB Nikolsky (Moscow), Russia; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

255. NAUMOV, Stanislav Aleksandrovich (Cyrillic: НАУМОВ, Станислав Александрович), Russia; DOB 04 Oct 1972; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

256. KHAMZAEV, Sultan Sultanbiyevich (Cyrillic: ХАМЗАЕВ, Бийсултан Султанбиевич), Russia; DOB 24 May 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

257. BESSARAB, Svetlana Viktorovna (Cyrillic: БЕССАРАБ, Светлана Викторовна), Russia; DOB 07 Dec 1970; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

258. FROLOVA, Tamara Ivanovna (Cyrillic: ФРОЛОВА, Тамара Ивановна), Russia; DOB 02 Nov 1959; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

259. BUTSKAYA, Tatiana Viktorovna (Cyrillic: БУЦКАЯ, Татьяна Викторовна), Russia; DOB 08 May 1975; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

260. DYAKONOVA, Tatyana Ivanovna (Cyrillic: ДЪЯКОНОВА, Татьяна Ивановна), Russia; DOB 22 Apr 1970; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

261. KUSAYKO, Tatyana Alekseyevna (Cyrillic: КУСАЙКО, Татьяна Алексеевна), Russia; DOB 15 Jan 1960; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

262. LOBACH, Tatyana Georgiyevna (Cyrillic: ЛОБАЧ, Татьяна Георгиевна), Russia; DOB 08 Jan 1974; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

263. VAZHENOV, Timofey (Cyrillic: БАЖЕНОВ, Тимофей), Russia; DOB 25 Jan 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

264. KANOKOV, Timur Borisovich (Cyrillic: КАНОКОВ, Тимур Борисович), Russia; DOB 24 Sep 1972; nationality Russia; Gender Male; Member of the

State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

265. KUMIN, Vadim Valentinovich (Cyrillic: КУМИН, Вадим Валентинович), Russia; DOB 01 Jan 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

266. BELOUSOV, Vadim Vladimirovich (Cyrillic: БЕЛОУСОВ, Вадим Владимирович), Russia; DOB 02 Oct 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

267. SHUVALOV, Vadim Nikolayevich (Cyrillic: ШУВАЛОВ, Вадим Николаевич), Russia; DOB 17 Feb 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

268. BULAVINOV, Vadim Yevgenyevich (Cyrillic: БУЛАВИНОВ, Вадим Евгеньевич), Russia; DOB 20 Mar 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

269. ARTAMONOVA, Valentina Nikolayevna (Cyrillic: АРТАМОНОВА, Валентина Николаевна), Russia; DOB 13 Dec 1960; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

270. PIVNENKO, Valentina Nikolayevna (Cyrillic: ПИВНЕНКО, Валентина Николаевна), Russia; DOB 14 Jun 1947; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

271. SKRUG, Valeriy Stepanovich (Cyrillic: СКРУГ, Валерий Степанович), Russia; DOB 20 Jun 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

272. SELEZNYOV, Valery Sergeyevich (Cyrillic: СЕЛЕЗНЕВ, Валерий Сергеевич), Russia; DOB 05 Sep 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

273. GARTUNG, Valery Karlovich (Cyrillic: ГАРТУНГ, Валерий Карлович), Russia; DOB 12 Nov 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

274. VLASOV, Vasily Maksimovich (Cyrillic: ВЛАСОВ, Василий Максимович), Russia; DOB 27 Jun 1995; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

275. RODINA, Victoria Sergeyevna (Cyrillic: РОДИНА, Виктория Сергеевна), Russia; DOB 29 Oct 1989; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].



Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

276. SOBOLEV, Viktor Ivanovich (Cyrillic: СОБОЛЕВ, Виктор Иванович), Russia; DOB 23 Feb 1950; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

277. SMIRNOV, Viktor Vladimirovich (Cyrillic: СМІРНОВ, Виктор Владимирович), Russia; DOB 09 Sep 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

278. SELIVERSTOV, Viktor Valentinovich (Cyrillic: СЕЛИВЕРСТОВ, Виктор Валентинович), Russia; DOB 02 Aug 1954; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

279. DERYABKIN, Viktor Yefimovich (Cyrillic: ДЕРЯБКИН, Виктор Ефимович), Russia; DOB 11 May 1954; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

280. DZYUBA, Viktor Viktorovich (Cyrillic: ДЗЮБА, Виктор Викторович), Russia; DOB 10 Aug 1977; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

281. SUBAREV, Viktor Vladislavovich (Cyrillic: ЗУБАРЕВ, Виктор Владиславович), Russia; DOB 20 Feb 1961; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

282. IGNATOV, Viktor Aleksandrovich (Cyrillic: ИГНАТОВ, Виктор Александрович), Russia; DOB 15 Oct 1968; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

283. KAZAKOV, Viktor Alekseyevich (Cyrillic: КАЗАКОВ, Виктор Алексеевич), Russia; DOB 04 Apr 1949; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

284. KIDYAEV, Viktor Borisovich (Cyrillic: КИДЯЕВ, Виктор Борисович), Russia; DOB 09 Jul 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

285. KUSHNAREV, Vitaliy Vasilyevich (Cyrillic: КУШНАРЁВ, Виталий Васильевич), Russia; DOB 01 May 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

286. BAKHMETYEV, Vitaly Viktorovich (Cyrillic: БАХМЕТЬЕВ, Виталий Викторович), Russia; DOB 12 Aug 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

287. YEFIMOV, Vitaly Borisovich (Cyrillic: ЕФИМОВ, Виталий Борисович), Russia; DOB 04 Apr 1940; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
- Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.
288. LIKHACHEV, Vitaly Viktorovich (Cyrillic: ЛИХАЧЁВ, Виталий Викторович), Russia; DOB 22 Feb 1964; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
- Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.
289. MILONOV, Vitaly Valentinovich (Cyrillic: МИЛОНОВ, Виталий Валентинович), Russia; DOB 23 Jan 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
- Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.
290. ISAKOV, Vladimir Pavlovich (Cyrillic: ИСАКОВ, Владимир Павлович), Russia; DOB 25 Feb 1987; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
- Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.
291. BLOTSKY, Vladimir Nikolayevich (Cyrillic: БЛОЦКИЙ, Владимир Николаевич), Russia; DOB 10 Nov 1977; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].
- Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.
292. SIPYAGIN, Vladimir Vladimirovich (Cyrillic: СИПЯГИН, Владимир Владимирович), Russia; DOB 19 Feb 1970; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

293. KOSHELEV, Vladimir Alekseyevich (Cyrillic: КОШЕЛЕВ, Владимир Алексеевич), Russia; DOB 01 Oct 1974; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

294. SENIN, Vladimir Borisovich (Cyrillic: СЕНИН, Владимир Борисович), Russia; DOB 17 Sep 1960; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

295. SAMOKISH, Vladimir Igorevich (Cyrillic: САМОКИШ, Владимир Игоревич), Russia; DOB 20 Sep 1975; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

296. BURMATOV, Vladimir Vladimirovich (Cyrillic: БУРМАТОВ, Владимир Владимирович), Russia; DOB 18 Aug 1981; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

297. IVANOV, Vladimir Valeryevich (Cyrillic: ИВАНОВ, Владимир Валерьевич), Russia; DOB 10 Feb 1971; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

298. ILYNIKH, Vladimir Alekseyevich (Cyrillic: ИЛЬИНЫХ, Владимир Алексеевич), Russia; DOB 20 May 1975; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

299. KONONOV, Vladimir Mikhaylovich (Cyrillic: КОНОНОВ, Владимир Михайлович), Russia; DOB 13 Mar 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

300. PLOTNIKOV, Vladimir Nikolayevich (Cyrillic: ПЛОТНИКОВ, Владимир Николаевич), Russia; DOB 30 Nov 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

301. RESIN, Vladimir Iosifovich (Cyrillic: РЕСИН, Владимир Иосифович), Russia; DOB 21 Feb 1936; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

302. MARKHAYEV, Vyacheslav Mikhaylovich (Cyrillic: МАРХАЕВ, Вячеслав Михайлович), Russia; DOB 01 Jun 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

303. FOMICHEV, Vyacheslav Vasilevich (Cyrillic: ФОМИЧЁВ, Вячеслав Васильевич), Russia; DOB 26 Apr 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

304. FETISOV, Vyacheslav (Cyrillic: ФЕТИСОВ, Вячеслав), Russia; DOB 20 Apr 1958; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

305. LOGINOV, Vyacheslav Yuryevich (Cyrillic: ЛОГИНОВ, Вячеслав Юрьевич), Russia; DOB 09 Jan 1979; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

306. NIKONOV, Vyacheslav (Cyrillic: НИКОНОВ, Вячеслав), Russia; DOB 05 Jun 1956; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

307. PETROV, Vyacheslav Anatolyevich (Cyrillic: ПЕТРОВ, Вячеслав Анатольевич), Russia; DOB 17 Aug 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

308. MAKAROV, Vyatcheslav Serafimovich (Cyrillic: МАКАРОВ, Вячеслав Серафимович), Russia; DOB 07 May 1955; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

309. LANTRATOVA, Yana Valeryevna (Cyrillic: ЛАНТРАТОВА, Яна Валерьевна), Russia; DOB 14 Dec 1988; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

310. NILOV, Yaroslav Yevgenyevich (Cyrillic: НИЛОВ, Ярослав Евгеньевич), Russia; DOB 20 Mar 1982; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

311. BONDARENKO, Yelena Veniaminovna (Cyrillic: БОНДАРЕНКО, Елена Вениаминовна), Russia; DOB 10 Jun 1968; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

312. YEVTYUKHOVA, Yelena Aleksandrovna (Cyrillic: ЕВТЮХОВА, Елена Александровна), Russia; DOB 07 Aug 1970; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

313. MARKOV, Yevgeny Vladimirovich (Cyrillic: МАРКОВ, Евгений Владимирович), Russia; DOB 08 Nov 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

314. FYODOROV, Yevgeny Alekseevich (Cyrillic: ФЁДОРОВ, Евгений Алексеевич), Russia; DOB 11 May 1963; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

315. LEBEDEV, Yevgeny Viktorovich (Cyrillic: ЛЕБЕДЕВ, Евгений Викторович), Russia; DOB 12 Dec 1957; nationality Russia; Gender Male;

Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

316. POPOV, Yevgeny (Cyrillic: ПОПОВ, Евгений), Russia; DOB 11 Sep 1978; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

317. SARANOVA, Yuliya Vladimirovna (Cyrillic: САРАНОВА, Юлия Владимировна), Russia; DOB 21 Oct 1988; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

318. DROZHZHINA, Yuliya Nikolayevna (Cyrillic: ДРОЖЖИНА, Юлия Николаевна), Russia; DOB 01 Mar 1990; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

319. OGLOBLINA, Yuliya Vasilyevna (Cyrillic: ОГЛОБЛИНА, Юлия Васильевна), Russia; DOB 01 Nov 1989; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

320. NAPSO, Yuri Aisovich (Cyrillic: НАПСО, Юрий Аисович), Russia; DOB 17 Apr 1973; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.



321. GRIGORYEV, Yuri Innokentyevich (Cyrillic: ГРИГОРЬЕВ, Юрий Иннокентьевич), Russia; DOB 20 Sep 1969; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

322. SHVYTKIN, Yuri Nikolayevich (Cyrillic: ШВЫТКИН, Юрий Николаевич), Russia; DOB 24 May 1965; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

323. SINELSHCHIKOV, Yury Petrovich (Cyrillic: СИНЕЛЬЩИКОВ, Юрий Петрович), Russia; DOB 26 Sep 1947; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

324. PETROV, Yury Aleksandrovich (Cyrillic: ПЕТРОВ, Юрий Александрович), Russia; DOB 10 Apr 1947; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

325. BAIGUSKAROV, Zarif Zakirovich (Cyrillic: БАЙГУСКАРОВ, Зариф Закирович), Russia; DOB 30 Jun 1967; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

326. GEKKIEV, Zaur Dalkhatovich (Cyrillic: ГЕККИЕВ, Заур Далхатович), Russia; DOB 12 Feb 1961; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

327. RYABTSEVA, Zhanna Anatolyevna (Cyrillic: РЯБЦЕВА, Жанна Анатольевна), Russia; DOB 08 Dec 1977; nationality Russia; Gender Female; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

328. MAKIYEV, Zurab Gayozovich (Cyrillic: МАКИЕВ, Зураб Гайозович), Russia; DOB 30 Sep 1976; nationality Russia; Gender Male; Member of the State Duma of the Federal Assembly of the Russian Federation (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

#### Entity:

1. STATE DUMA OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION (Cyrillic: ГОСУДАРСТВЕННАЯ ДУМА ФЕДЕРАЛЬНОГО СОБРАНИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ), Okhotny Ryad, 1, Moscow 103265, Russia; Website <http://www.duma.gov.ru/>; Organization Type: General public administration activities; Target Type Government Entity [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iv) of E.O. 14024 for being a political subdivision, agency, or instrumentality of the Government of the Russian Federation.

Dated: March 24, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control,  
U.S. Department of the Treasury.*

[FR Doc. 2022-06837 Filed 3-30-22; 8:45 am]

BILLING CODE 4810-AL-C

#### DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0216]

#### Agency Information Collection Activity: Application for Accrued Amounts Due a Deceased Beneficiary; Correction

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on Friday, March 25, 2022, that contained an error. The 60-day Public Comment notice identified the wrong

type of review for the Agency Information Collection Activity. This document corrects the notice by replacing the error and providing the correction from an extension of a currently approved collection to a revision of a currently approved collection.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to "OMB Control No. 2900-0216" in any correspondence.

#### SUPPLEMENTARY INFORMATION:

**Correction**

In FR Doc. 2022–06343, published on Friday, March 25, 2022, at 87 FR 17140, make the following corrections. On page 17140, in the **SUMMARY** section, and in the **SUPPLEMENTARY INFORMATION** section

under “Type of Review,” replace the two instances of the word “extension” with the word “revision.”

Dated: March 28, 2022.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–06792 Filed 3–30–22; 8:45 am]

**BILLING CODE 8320–01–P**



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Part II

## Department of Energy

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10 CFR Part 431

Energy Conservation Program: Test Procedure for Refrigerated Bottled or Canned Beverage Vending Machines; Proposed Rule

**DEPARTMENT OF ENERGY****10 CFR Part 431****[EERE–2021–BT–TP–0007]****RIN 1904–AE67****Energy Conservation Program: Test Procedure for Refrigerated Bottled or Canned Beverage Vending Machines**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and announcement of public meeting.

**SUMMARY:** The U.S. Department of Energy (“DOE”) proposes to amend the test procedures for refrigerated bottled or canned beverage vending machines (“BVMs”) to reference the latest version of the industry standard. DOE also proposes to provide setup instructions for non-beverage shelves, update the lowest application product temperature definition and instructions, require testing of coin and bill payment mechanisms if shipped with the BVM (but not until the compliance date of any amended energy conservation standards), specify setup instructions for leak mitigation controls, and remove an obsolete version of the test procedure. DOE is seeking comment from interested parties on the proposal.

**DATES:** DOE will accept comments, data, and information regarding this proposal no later than May 31, 2022. See section V, “Public Participation,” for details. DOE will hold a webinar on Monday, May 2, 2022, from 1:00 p.m. to 4:00 p.m. See section V, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), under docket number EERE–2021–BT–TP–0007. Alternatively, interested persons may submit comments by email to [BVM2021TP0007@ee.doe.gov](mailto:BVM2021TP0007@ee.doe.gov). Include docket number EERE–2021–BT–TP–0007 in the subject line of the message. No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to

make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

**Docket:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at [www.regulations.gov/docket/EERE–2021–BT–TP–0007](http://www.regulations.gov/docket/EERE–2021–BT–TP–0007). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: [Sarah.Butler@hq.doe.gov](mailto:Sarah.Butler@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** DOE proposes to maintain a previously approved incorporation by reference and to incorporate by reference the

following industry standards into 10 CFR part 431:

American National Standards Institute (“ANSI”)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) Standard 32.1, (“ANSI/ASHRAE Standard 32.1–2017”), “Methods of Testing Rating Refrigerated Vending Machines for Sealed Beverages”;

ANSI/Association of Home Appliance Manufacturers (“AHAM”) Standard HRF–1, (“ANSI/AHAM HRF–1–2008”), “Energy And Internal Volume Of Refrigerating Appliances”.

Copies of ANSI/ASHRAE Standard 32.1–2017 can be purchased from ASHRAE’s bookstore at [webstore.ansi.org](http://webstore.ansi.org). Copies of ANSI/AHAM HRF–1–2008 can be purchased at [webstore.ansi.org/standards/aham/ahamhrf2008](http://webstore.ansi.org/standards/aham/ahamhrf2008).

For a further discussion of these standards, see section IV.M of this document.

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**I. Authority and Background**

DOE is authorized to establish and amend energy conservation standards and test procedures for Refrigerated Bottled or Canned Beverage Vending Machines (“BVMs”). (42 U.S.C. 6295(v); 42 U.S.C. 6293(b)(15)) DOE’s energy conservation standards and test procedures for Refrigerated Bottled or Canned Beverage Vending Machines (“BVMs”) are currently prescribed at subpart Q of part 431 of title 10 of the Code of Federal Regulations (“CFR”). The following sections discuss DOE’s authority to establish test procedures for BVMs and relevant background information regarding DOE’s consideration of test procedures for this product.

*A. Authority*

The Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include BVMs, the subject of this document. (42 U.S.C. 6295(v))<sup>3</sup>

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>3</sup> Because Congress included BVMs in Part A of Title III of EPCA, the consumer product provisions of Part A (rather than the industrial equipment provisions of Part A–1) apply to BVMs. DOE placed the regulatory requirements specific to BVMs in 10 CFR part 431, “Energy Efficiency Program for Certain Commercial and Industrial Equipment” as a matter of administrative convenience based on their type and will refer to BVMs as “equipment” throughout this document because of their placement in 10 CFR part 431. Despite the placement of BVMs in 10 CFR part 431, the relevant provisions of Title A of EPCA and 10 CFR part 430, which are applicable to all product types specified in Title A of EPCA, are applicable to BVMs. See 74 FR 44914, 44917 (Aug. 31, 2009) and 80 FR 45758, 45759 (Jul. 31, 2015). The regulatory provisions of 10 CFR 430.33 and 430.34 and subparts D and E of 10 CFR part 430 are applicable to BVMs. Because the procedures in 10 CFR parts 430 and 431 for petitioning DOE for obtaining a test procedure waiver are substantively the same (79 FR 26591, 26601 (May 9, 2014)), the regulations for applying

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the

for a test procedure waiver for BVMs are those found at 10 CFR 431.401 rather than those found at 10 CFR 430.27.

current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (“IEC”) Standard 62301<sup>4</sup> and IEC Standard 62087<sup>5</sup> as applicable. (42 U.S.C. 6295(gg)(2)(A))

With respect to BVMs, EPCA requires the test procedure to be based on the 2004 version of ANSI/ASHRAE Standard 32.1, “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.” (42 U.S.C. 6293(b)(15))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including BVMs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6293(b)(1)(A)(ii))

<sup>4</sup> IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

<sup>5</sup> IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

DOE is publishing this notice of proposed rulemaking (“NOPR”) in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

*B. Background*

DOE’s existing test procedures for BVMs appear at 10 CFR part 431, subpart Q, appendix A and appendix B, both titled “Uniform Test Method for the Measurement of Energy Consumption of Refrigerated Bottled or Canned Beverage Vending Machines” (“appendix A” and “appendix B”, respectively). On or after January 8, 2019, any representations, including compliance certifications, made with respect to the energy use or efficiency of BVMs must be made in accordance with the results of testing pursuant to appendix B.

On July 31, 2015, DOE published a test procedure final rule (“July 2015 Final Rule”) that referenced updated industry test methods, improved clarity of the procedure, accounted for new equipment features, and established the test procedures at appendix A and

appendix B.<sup>6</sup> 80 FR 45758; *See also* 81 FR 1028 (January 8, 2016). The specific amendments in the July 2015 Final Rule included, for both appendix A and appendix B: (1) Updating the referenced test method to ANSI/ASHRAE Standard 32.1–2010, “Methods of Testing for Rating Vending Machines for Sealed Beverages,” (“ANSI/ASHRAE Standard 32.1–2010”), (2) incorporating amendments to clarify several ambiguities in ANSI/ASHRAE Standard 32.1–2010, (3) eliminating the requirement to test at the 90-degree Fahrenheit (“°F”) ambient test condition, (4) clarifying the test procedure for combination vending machines, (5) clarifying the requirements for loading of BVMs under the DOE test procedure, (6) specifying the characteristics of a standard test package, (7) clarifying the average next-to-vend beverage temperature test condition, (8) specifying placement of thermocouples during the DOE test procedure, (9) establishing provisions for testing at the lowest application product temperature, (10) clarifying the

treatment of certain accessories during the DOE test procedure, and (11) clarifying the certification and reporting requirements for covered BVMs. 80 FR 45758, 45760. The July 2015 Final Rule also incorporated amendments in appendix B to account for the impact of low-power modes on the measured daily energy consumption (“DEC”) of BVMs. *Id.*

On May 19, 2021, DOE published in the **Federal Register** an early assessment request for information (“May 2021 RFI”) seeking comments on the existing DOE test procedure for BVMs. 86 FR 27054. In the May 2021 RFI, DOE requested comments, information, and data regarding a number of issues, including (1) scope and definitions, (2) test procedure setup and conditions, (3) updates to industry standards, (4) low power modes and recovery periods, (5) alternate refrigerants, (6) payment mechanisms, and (7) connected functions.

DOE received comments in response to the May 2021 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO MAY 2021 RFI

Commenter(s)	Reference in this NOPR	Commenter type
CoilPod LLC .....	CoilPod .....	Component/Material Supplier.
Appliance Standards Awareness Project, Natural Resources Defense Council .....	ASAP and NRDC .....	Efficiency Organizations.
Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric; collectively, the California Investor-Owned Utilities.	CA IOUs .....	Utility Association.
Northwest Energy Efficiency Alliance, Northwest Power and Conservation Council .....	NEEA and NPCC .....	Efficiency Organizations.
National Automatic Merchandising Association .....	NAMA .....	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>7</sup>

*C. Deviation From the Process Rule*

In accordance with section 3(a) of part 430, subpart C, appendix A (“Appendix A”), DOE notes that it is deviating from the provision in appendix A regarding publication of further opportunity to comment following an early assessment RFI prior to a NOPR to amend the test procedure. Section 8(b) of appendix A; 10 CFR 431.4. DOE is opting to deviate from this step because in the May 2021 RFI DOE already requested and received information on the topics addressed in DOE’s proposal. DOE has tentatively

determined the proposals do not require an additional pre-NOPR opportunity for public comment.

**II. Synopsis of the Notice of Proposed Rulemaking**

In this NOPR, DOE proposes to update the test procedure at appendix B as follows:

- (1) Incorporate by reference the current industry standard ANSI/ASHRAE Standard 32.1–2017.
- (2) Incorporate by reference the industry standard ANSI/AHAM HRF–1–2008 referenced in ANSI/ASHRAE Standard 32.1–2017.
- (3) Maintain the existing DOE test procedure requirements that are not included in ANSI/ASHRAE Standard 32.1–2017.

- (4) Provide setup instructions for non-beverage shelves in refrigerated compartments.
- (5) Amend the definition of lowest application product temperature (“LAPT”) to allow for testing BVMs only capable of operating at temperatures below the specified test temperature.
- (6) Require testing of coin and bill payment mechanisms if shipped with the BVM (but not until the compliance date of any amended energy conservation standards).
- (7) Specify setup instructions for leak mitigation controls consistent with the existing test procedure instructions.
- (8) Remove the obsolete test procedure in appendix A.

DOE’s proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

<sup>6</sup> As discussed further in this section, the test procedure at appendix B accounts for additional BVM operating modes not accounted for in appendix A and is mandatory for demonstrating compliance with the energy conservation standards

in 10 CFR 431.296(b), which are required for BVMs manufactured on or after January 8, 2019.

<sup>7</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop test procedures for BVMs.

(Docket No. EERE–2021–BT–TP–0007, which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Incorporates by reference ANSI/ASHRAE Standard 32.1–2010.	Incorporates by reference ANSI/ASHRAE Standard 32.1–2017.	Reference most recent industry test method.
Refers to Appendix C of ANSI/ASHRAE Standard 32.1–2010, which references ANSI/AHAM HRF–1–2004, for measurement of refrigerated volume.	Incorporates by reference ANSI/AHAM HRF–1–2008 for measurement of refrigerated volume, as referenced in Appendix C of ANSI/ASHRAE Standard 32.1–2017.	Incorporate by reference industry test method required for testing.
Does not specifically address loading of non-beverage merchandise shelves within the refrigerated compartment.	Specifies that non-beverage merchandise shelves within the refrigerated compartment are unloaded for testing.	Improve representativeness and reproducibility.
Defines LAPT only for units that operate at temperatures above the test condition.	Adds a definition for LAPT and test instructions for units that can only operate below the test condition.	Improve representativeness and reproducibility.
Payment mechanisms are de-energized for testing; energy calculations include a representative daily energy consumption adder for payment mechanisms.	Requires coin and bill payment mechanisms to be energized and tested upon the compliance date of any amended energy conservation standards.	Improve representativeness.
Generally requires components necessary for primary functionality to be energized and those not necessary for primary functionality to be de-energized for testing.	Specifies that leak mitigation controls would be energized or de-energized for testing depending on whether they are necessary for primary functionality of the BVM.	Improves representativeness.
Includes appendix B required for testing current BVMs and appendix A which is now obsolete.	Removes obsolete appendix A .....	Improves readability.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of BVMs or require retesting or recertification solely as a result of DOE’s adoption of the proposed amendments to the test procedures, if made final. The proposed amendment to require coin and bill payment mechanisms to be energized during testing would not be required until the compliance date of any amended energy conservation standards for BVMs that account for the measurement of the coin and bill payment mechanism energy, should such standards be adopted. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE’s proposed actions are addressed in detail in section III of this NOPR.

**III. Discussion**

**A. Scope and Definitions**

BVMs are commercial refrigerators (as defined at 10 CFR 431.62<sup>8</sup>) that cool bottled or canned beverages and dispense the bottled or canned beverages on payment. 10 CFR 431.292. The defined equipment classes for BVMs include Class A, Class B, Combination A, and Combination B.

Class A means a BVM that is not a combination vending machine and in which 25 percent or more of the surface

area on the front side of the beverage vending machine is transparent.

Class B means a BVM that is not considered to be Class A and is not a combination vending machine.

Combination A means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.<sup>9</sup>

Combination B means a combination vending machine that is not considered to be Combination A.

Combination vending machine means a BVM containing two or more compartments separated by a solid partition, that may or may not share a product delivery chute, in which at least one compartment is designed to be refrigerated, as demonstrated by the presence of temperature controls, and at least one compartment is not. 10 CFR 431.292.

In the May 2021 RFI, DOE requested comment on several topics regarding scope and definitions. 86 FR 27054, 27056. DOE requested comment on whether it should define “dispense” to better differentiate between BVMs and other commercial refrigerators as defined in 10 CFR 431.62. *Id.* DOE also requested comment on the distinction between refrigerated and non-refrigerated compartments and whether the term “solid partition” in the definition of combination vending

machines needs further specificity. *Id.* Regarding equipment classes, DOE requested comment on whether any additional clarifications are needed for the existing BVM equipment class definitions, or if there are any categories within the current classes that would require additional test provisions. *Id.*

DOE received no comment on these issues in response to the May 2021 RFI. Additionally, DOE has not identified BVMs available on the market that would require additional specificity in the existing BVM definitions. Therefore, DOE has tentatively determined that amendments are not required and is not proposing any new or amended BVM definitions in this NOPR.

**B. Updates to Industry Standards**

DOE’s BVM test procedure in appendix B incorporates by reference ANSI/ASHRAE Standard 32.1–2010, which was the most current version of the industry standard available at the time of the July 2015 Final Rule. 80 FR 45758, 45762. DOE specifically references section 3, “Definitions”; section 4, “Instruments”; section 5, “Vendible Capacity”; section 6, “Test Conditions”; section 7.1, “Test Procedures—General Requirements”; and section 7.2, “Energy Consumption Test” of ANSI/ASHRAE Standard 32.1–2010. Appendix B includes certain exceptions to these references, and in cases of conflict between appendix B language and the requirements of ANSI/ASHRAE Standard 32.1–2010, the language in appendix B takes precedence. See section 1 of appendix B.

<sup>8</sup> As defined in 10 CFR 431.62, *commercial refrigerator* means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating at or above 32 °F (±2 °F).

<sup>9</sup> As provided in 10 CFR 429.134(j)(2), the determination of percent transparent surface does not include the surface area surrounding any compartments that are not designed to be refrigerated (as demonstrated by the presence of temperature controls), whether or not it is transparent.



At the time of the July 2015 Final Rule analysis, DOE was aware of ongoing industry meetings to consider updates to ASHRAE Standard 32.1. DOE participated in those industry meetings and, to the extent possible, sought to align its test procedure with the expected updates to ASHRAE 32.1. 80 FR 45758, 45762.

On February 2, 2017, ANSI and ASHRAE approved the latest version of Standard 32.1, ANSI/ASHRAE 32.1–2017, “Methods of Testing for Rating Vending Machines for Sealed Beverages,” (“ANSI/ASHRAE Standard 32.1–2017”).

Many of the revisions included in ANSI/ASHRAE Standard 32.1–2017 harmonize the industry standard with the existing DOE test procedure. However, some substantive differences between DOE’s test procedure at appendix B and ANSI/ASHRAE Standard 32.1–2017 remain, notably the following:

(1) Section 2.2.4 of appendix B contains provisions for testing accessory low power mode, and section 2.3.2 of appendix B accounts for refrigeration low power mode; whereas ANSI/ASHRAE Standard 32.1–2017 contains no such provisions (and specifically prohibits operation in low-power mode during testing, per section 7.2.2.6.2). See section III.B.6 of this NOPR for additional discussion of low power modes.

(2) Section 2.1.3 of appendix B provides instructions for testing BVMs that are not capable of maintaining an integrated average temperature of 36 °F ± 1 °F during the 24-hour test period; whereas ANSI/ASHRAE Standard 32.1–2017 contains no such provisions. See section II.B.4 of this NOPR for additional discussion of lowest application product temperatures.

(3) Section 2.2.1.4 of appendix B specifies a “standard product” consisting of standard 12-ounce aluminum beverage cans filled with a liquid with a density of 1.0 grams per milliliter (“g/mL”) ± 0.1 g/mL at 36 °F; whereas ANSI/ASHRAE Standard 32.1–2017 specifies using a 33 percent propylene glycol and 67 percent water solution. See section II.B.3 for additional discussion of standard product characteristics.

(4) Section 2.2.5.1 of appendix B provides instructions for payment mechanisms that cannot be disconnected during testing (if the payment mechanism is not removed, appendix B requires it to be in place but de-energized, or set to the lowest energy consuming state if it cannot be de-energized) and specifies a default payment mechanism energy

consumption of 0.20 kWh/day; whereas ANSI/ASHRAE Standard 32.1–2017 contains no such provisions. See section II.B.5 for additional discussion of payment mechanisms.

(5) Section 2.2.3 of appendix B requires energy management systems to be disabled and energy-saving features that cannot be disabled to be set to their most energy-consuming settings; whereas ANSI/ASHRAE Standard 32.1–2017 also requires that energy management systems be disabled, but does not address other energy-saving features that cannot be disabled.

(6) Sections 2.2.5.2 through 2.2.5.10 of appendix B provide additional setup instructions regarding certain equipment accessories (*i.e.*, internal lighting; external customer display signs, lights, and digital screens; anti-sweat or other electric resistance heaters; condensate pan heaters and pumps; illuminated temperature displays; condensate filters; security covers; general purpose outlets; and crankcase heaters and other electric resistance heaters for cold weather); whereas ANSI/ASHRAE Standard 32.1–2017 provides instructions for only a subset of these accessories (*i.e.*, video screens and lighting).

(7) Section 2.2.2 of appendix B prohibits routing thermocouple wires and other measuring equipment through the dispensing door; whereas ANSI/ASHRAE Standard 32.1–2017 contains no such prohibition (only that they be installed in a manner that does not affect energy performance).

(8) Section 2.3.3 of appendix B provides rounding instructions on energy consumption results; whereas ANSI/ASHRAE Standard 32.1–2017 contains no such rounding instructions.

(9) ANSI/ASHRAE Standard 32.1–2017 provides an additional recovery test (to determine the product temperature recovery time of the BVM when loaded with product at a certain temperature) and a vend test (to determine how much cold product a BVM will deliver when bottles, cans, or other sealed packages are vended at a rate of two per minute, 3 hours after a half-full machine is refilled with product at a specified beverage temperature); whereas appendix B contains no such tests. These tests assess product temperature recovery and vending performance but do not factor into the energy use measurement in ANSI/ASHRAE Standard 32.1–2017.

In addition to the differences with the DOE test procedure, ANSI/ASHRAE Standard 32.1–2017 also lists key changes from the 2010 version, summarized by the following:

- Updates definitions to specify the application to BVMs;
- Removes zone-cooled/fully cooled distinction;
- Updates AHAM HRF–1 reference to a more recent version of the standard (2008);
- Removes the 90 °F test condition for ambient temperature and maintains a single ambient temperature (75 °F);
- Clarifies test setup requirements for temperature sensor locations and test package/wire setup;
- Incorporates requirements for the controls systems; and
- Clarifies the integrated average temperature (“IAT”) calculation.

In the May 2021 RFI, DOE requested comment on whether it should update its test procedure to incorporate by reference ANSI/ASHRAE Standard 32.1–2017 and whether any of the updates included would affect measured energy consumption. 86 FR 27054, 27057. Additionally, DOE requested comment on the differences between the current DOE test procedure and ANSI/ASHRAE Standard 32.1–2017, and whether there are any known deficiencies in ANSI/ASHRAE Standard 32.1–2017 that DOE should consider addressing in the future. *Id.*

ASAP and NRDC and the CA IOUs commented in support of updating the current DOE test procedure to incorporate by reference ANSI/ASHRAE Standard 32.1–2017. (ASAP and NRDC, No. 4, p.1; CA IOUs, No. 6, p.2)

ASAP and NRDC, NEEA and NPCC, and the CA IOUs recommended that DOE maintain provisions for low power mode testing, which are not included in ANSI/ASHRAE Standard 32.1–2017. (ASAP and NRDC, No. 4, p. 1; NEEA and NPCC, No.7, p.3; CA IOUs No. 6, p.2) ASAP and NRDC commented that these test provisions can incentivize manufacturers to incorporate more energy management controls to reduce energy consumption. (ASAP and NRDC, No. 4, p.1) ASAP and NRDC also commented that DOE should maintain the current test procedure provision to address energy saving features that cannot be disabled, which is not included in ANSI/ASHRAE Standard 32.1–2017, to help maintain consistency for testing across different machines. (ASAP and NRDC, No. 4, p. 2) NEEA and NPCC further recommended that DOE should maintain the requirement that energy saving features be enabled during testing. (NEEA and NPCC, No.7 p.3)

ASAP and NRDC, as well as NEEA and NPCC, recommended that DOE should continue to account for payment mechanism energy consumption, which is not included in ANSI/ASHRAE

Standard 32.1–2017. (ASAP and NRDC, No. 4, p.2; NEEA and NPCC, No. 7, p. 3)

Additionally, ASAP and NRDC, as well as NEEA and NPCC, supported maintaining existing accessory equipment setup instructions not included in ANSI/ASHRAE Standard 32.1–2017 to help provide clarity for lab technicians and consistency across test labs. (ASAP and NRDC, No. 4, p. 2; NEEA and NPCC, No. 7, p.3)

ASAP and NRDC, as well as NEEA and NPCC, also recommend maintaining the rounding instructions currently in the DOE test procedure (for energy consumption results) because ASHRAE Standard 32.1–2017 does not contain such instructions. (ASAP and NRDC, No. 4, p. 2; NEEA and NPCC, No. 7, p.3)

The CA IOUs also commented that they believe the ANSI/ASHRAE Standard 32.1–2017 specifications on contents of the test containers will result in higher reproducibility and should be adopted for the DOE test procedure. (CA IOUs, No. 6, p. 2)

DOE considered the comments received in response to the May 2021 RFI and proposes to incorporate by reference the most recent updated industry standard ANSI/ASHRAE Standard 32.1–2017, while maintaining the current DOE test procedure provisions not included in ANSI/ASHRAE Standard 32.1–2017 regarding energy management systems, accessory setup instructions, wire routing, and rounding. This proposed approach is consistent with the recommendations from interested parties. DOE has tentatively determined that this proposal would not impact current BVM ratings or test costs because the proposed test procedure is substantively the same as the current DOE test procedure.

The other topics raised in comments from interested parties or noted as differences between ANSI/ASHRAE Standard 32.1–2017 and the current DOE test procedure (*i.e.*, characteristics of the standard product, lowest application product temperature, payment mechanisms, low-power modes, and additional operating modes) are discussed in detail in subsequent sections of this NOPR.

As discussed earlier in this section, Appendix C of ANSI/ASHRAE Standard 32.1–2017 refers to the 2008 version of ANSI/AHAM Standard HRF–1 “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers” (“ANSI/AHAM HRF–1–2008”) for measuring the refrigerated volume of BVMs. The current DOE test procedure, by reference to ANSI/ASHRAE Standard 32.1–2010, refers to

the 2004 version of ANSI/AHAM Standard HRF–1 (“ANSI/AHAM HRF–1–2004”) for measuring BVM refrigerated volume. For consistency with the proposed incorporation by reference of ANSI/ASHRAE Standard 32.1–2017, DOE is also proposing to incorporate by reference ANSI/AHAM HRF–1–2008 to ensure that BVM testing is conducted to the appropriate test standard. DOE has determined that the updates made to ANSI/AHAM HRF–1 between the 2004 and 2008 versions provide clarifications and instructions for measuring components that are specific to consumer refrigeration products (*e.g.*, consideration of through-the-door ice and water dispensers) and that current refrigerated volume measurements and ratings for BVMs would be unchanged under the proposed updated industry standard reference.

DOE requests comment on its proposal to incorporate by reference the most current industry test standard, ANSI/ASHRAE Standard 32.1–2017, including the updated reference to ANSI/AHAM HRF–1–2008 for measuring refrigerated volume. Specifically, DOE requests comment on whether the proposed amendments would affect BVM ratings as measured under the existing test procedure or whether they would impact test burden.

### C. Test Procedure

In the May 2021 RFI, DOE specifically asked for comment on the following topics: Ambient test conditions, test procedure for combination BVMs, characteristics of the standard product, lowest application product temperature, payment mechanisms, low power modes, reloading and recovery periods, alternate refrigerants, and connected functions. 86 FR 27054, 27057–27061. The following sections summarize the comments received on these topics DOE’s responses, and any corresponding proposed amendments to the DOE test procedure.

#### 1. Ambient Test Conditions

Section 2.1.2 of appendix B requires testing and rating BVM performance in a 75 °F ambient temperature with a 45 percent relative humidity. Prior to the July 2015 Final Rule, the DOE test procedure incorporated by reference ANSI/ASHRAE Standard 32.1–2004, which included two ambient test conditions: 75 °F with a 45 percent relative humidity and 90 °F with a 65 percent relative humidity. However, compliance with DOE’s energy conservation standard was determined based on performance at only the 75 °F with a 45 percent relative humidity test

condition. In the July 2015 Final Rule, DOE determined that the 75 °F with a 45 percent relative humidity test condition provides a reasonable and comparable representation of energy performance for all BVMs and removed the 90 °F with a 65 percent relative humidity condition. 80 FR 45758, 45765.

During the rulemaking leading to the July 2015 Final Rule, DOE estimated that 18 percent of Class B and Combination B BVMs are installed outdoors. 80 FR 45758, 45765. DOE determined that, although these BVMs would experience different ambient conditions than in the test procedure, it would not be feasible to test at all the conditions BVMs may experience in the field. *Id.* In ANSI/ASHRAE Standard 32.1–2017, the 90 °F with a 65 percent relative humidity test condition for the energy consumption test was removed, and the industry test standard designated the 75 °F with a 45 percent relative humidity test condition as the singular test condition.

If certain BVMs are specifically designed to operate in unique ambient conditions (*i.e.*, are intended for use only in the unique condition and are not optionally installed indoors, as are most BVMs), testing at a different ambient condition may better represent average energy use in the field.

In the May 2021 RFI, DOE requested comment on the number of BVMs that operate outdoors or in other unique environments that might differ from the single specified test condition. 86 FR 27054, 27058. DOE also requested information on how to identify and define outdoor BVMs, appropriate test methods to represent their energy consumption, and the costs associated with those methods. *Id.*

DOE did not receive any comments on these topics in response to the May 2021 RFI. While acknowledging that BVMs may be installed and operated in a variety of locations and ambient conditions, DOE has tentatively determined that the existing single test condition provides a representative test condition for BVMs, consistent with the July 2015 Final Rule determination. DOE does not propose any changes to the current requirement to test under the single ambient test condition (75 °F and 45 percent relative humidity), consistent with the test condition specified in ASHRAE Standard 32.1–2017.

#### 2. Test Procedure for Combination BVMs

As described in section III.A, DOE defines “combination BVM” as a BVM containing two or more compartments separated by a solid partition, that may

or may not share a product delivery chute, in which at least one compartment is designed to be refrigerated, as demonstrated by the presence of temperature controls, and at least one compartment is not. 10 CFR 431.292. The thermal mass of items loaded into the non-refrigerated compartments (or lack of thermal mass for unloaded compartments) may affect the measured DEC of combination BVMs. Section 2.2.1.3 of appendix B specifies that the non-refrigerated compartments of combination BVMs must not be loaded with any standard products or other vendible merchandise during testing. Sections 7.2.2.2 and 7.2.2.7 of ANSI/ASHRAE Standard 32.1–2017 require combination BVMs not to be loaded with any standard products, test packages, or other vendible merchandise in the non-refrigerated compartments.

The thermal mass of items loaded into the non-refrigerated compartments (or lack of thermal mass for unloaded compartments) may affect the measured DEC of combination BVMs. In the May 2021 RFI, DOE sought feedback on whether requiring some load in the non-refrigerated compartment would better represent the average energy use of combination BVMs. 86 FR 27054, 27058. DOE also requested comment on the typical thermal mass of merchandise loaded into the non-refrigerated compartments of combination BVMs and the potential impact of such a load on tested energy consumption. *Id.*

ASAP and NRDC encouraged DOE to consider requiring a load in the non-refrigerated compartments, after investigating the typical thermal mass loaded, to provide a more representative energy consumption measurement. (ASAP and NRDC, No. 4, p. 2)

DOE did not receive comments in response to the May 2021 RFI regarding the typical thermal mass of loads in the non-refrigerated compartments on combination BVMs. Based on a review of the market, typical loads for non-refrigerated compartments can range from small items with density similar to beverages (e.g., chocolate bars), to larger low-density items (e.g., bags of chips). Given the wide range of products stored in non-refrigerated compartments, DOE has not identified a typical representative load for these compartments. Additionally, DOE acknowledges that loading non-refrigerated compartments in a consistent, repeatable manner may be difficult due to the range of shelf configurations in those compartments. DOE did not identify a standard package that could be consistently loaded into non-refrigerated shelves for testing.

Requiring such a load would introduce additional test burden compared to the existing unloaded approach.

DOE has tentatively determined that the current test procedure provides a representative, repeatable, and reproducible approach for testing combination BVMs while minimizing test burden. Accordingly, DOE is not proposing to require a load in non-refrigerated compartments.

DOE continues to request information on typical loads for non-refrigerated compartments in combination BVMs and, if DOE were to require such loads for testing, the potential impacts on combination BVM energy consumption and test burden.

### 3. Characteristics of the Standard Product

Section 2.2.1.4 of appendix B specifies the standard products to be used for testing, which include the following: 12-ounce aluminum beverage cans filled with a liquid with a density of 1.0 grams per milliliter (“g/mL”)  $\pm 0.1$  g/mL at 36 °F; or, for product storage racks that are not capable of vending 12-ounce cans, but are capable of vending 20-ounce bottles, 20-ounce plastic bottles filled with a liquid with a density of 1.0 g/mL  $\pm 0.1$  g/mL at 36 °F; or, for product storage racks that are not capable of vending 12-ounce cans or 20-ounce bottles, the packaging and contents specified by the manufacturer in product literature as the standard product (*i.e.*, the specific merchandise the refrigerated bottled or canned beverage vending machine is designed to vend).

In the July 2015 Final Rule, DOE discussed the possibility of considering other standard products, including slimline cans, milk cartons, aseptic packs, pouches, and energy drinks. 80 FR 45758, 45768. These potential alternative standard products all hold liquids and otherwise would allow for testing following the current BVM test procedure instructions. However, DOE determined that the standard product for BVMs not capable of vending 12-ounce cans or 20-ounce bottles is the product specified by the manufacturer in product literature. *Id.*

In the May 2021 RFI, DOE requested comment on whether the standard products as currently defined (*i.e.*, the products comprising the BVM test load) are representative of average BVM use and if any additional products should be defined as standard products to limit variability in testing. 86 FR 27054, 27058. Additionally, DOE requested detailed descriptions of any such products and what the appropriate method of loading would be for BVMs

designed to dispense merchandise other than the standard products. 86 FR 27054, 27058–27059.

DOE did not receive comment on these topics in response to the May 2021 RFI and proposes to maintain the current test procedure standard packages of 12-ounce cans, 20-ounce bottles, or the packaging and contents specified by the manufacturer in product literature, depending on the BVM vending capability.

Additionally, DOE stated in the May 2021 RFI that certain BVMs are marketed to vend both beverages and food, but do not contain a solid partition that separates the shelves or compartments intended for refrigerated bottled or canned beverages from those intended for other merchandise. 86 FR 27054, 27058. If the non-beverage shelves of these BVMs are not capable of vending 12-ounce cans or 20-ounce bottles, the standard product for testing is the packaging and contents specified by the manufacturer in product literature as the standard product per section 2.2.1.4 of appendix B. *Id.*

For non-beverage shelves, manufacturers do not always specify the packaging and contents of the merchandise to be loaded. Additionally, measuring temperature at the center of mass of non-liquid merchandise packaging would provide unique challenges compared to liquid containers (e.g., measuring the center of mass of a bag of chips).

Similar to the discussion regarding non-refrigerated compartments in combination BVMs in section III.C.2 of this document, DOE has tentatively determined that it cannot identify a representative non-beverage test load because of the wide range of merchandise that could be loaded in non-beverage shelves. Additionally, DOE expects that measuring the temperatures of non-beverage standard packages would be difficult to do repeatably and reproducibly (*i.e.*, measuring the temperature in food packaging rather than in a liquid) and would increase test burden. To ensure that BVMs with non-beverage merchandising shelves are tested consistently and in a representative manner while limiting test burden, DOE is proposing to specify in a new section 2.2.1.1 of appendix B that shelves within the refrigerated compartment that are only for non-beverage merchandise must not be loaded for testing. DOE expects that manufacturers may already use this approach for testing shelves that cannot accommodate any beverage containers (*i.e.*, it is unclear how manufacturers currently test such BVMs, and DOE has

not received petitions for waiver regarding this issue). DOE similarly does not expect that this proposal would result in any cost impacts for BVM manufacturers.

DOE requests comment on the proposal to specify that non-beverage merchandise shelves not be loaded for testing BVMs. DOE seeks information on how such models are currently tested and on whether this proposal would impact current BVM ratings or test burden.

As discussed in section III.B, section 2.2.1.4 of appendix B requires that the standard product 12-ounce cans or 20-ounce bottles be filled with liquid with a density of 1.0 grams per milliliter (“g/mL”)  $\pm$  0.1 g/mL at 36 °F. Whereas, ANSI/ASHRAE Standard 32.1–2017 requires the beverage temperature test packages to be filled with a 33 percent propylene glycol and 67 percent water solution. ANSI/ASHRAE Standard 32.1–2017 does not specify whether these glycol and water percentages are based on weight or volume. In the May 2021 RFI, DOE requested comment on whether the standard products defined in appendix B require any further specifications. 86 FR 27054, 27059. DOE requested feedback on whether it should specify the contents of the test containers (e.g., the 33 percent propylene glycol and 67 percent water solution, and whether these percentages are based on weight or volume) as specified in ANSI/ASHRAE Standard 32.1–2017. *Id.*

The CA IOUs commented that they believe the ANSI/ASHRAE Standard 32.1–2017 specifications for test container contents would result in higher reproducibility and should be adopted for the DOE test procedure. (CA IOUs, No. 6, p. 2)

DOE specifies the use of a propylene glycol solution in other test procedures, such as for testing commercial refrigeration equipment.<sup>10</sup> Commercial freezers are by definition capable of operating below 32 °F (see 10 CFR 431.62) and are tested at a 0 °F integrated average temperature. See section 2.1 of 10 CFR part 431, subpart C, appendix B. While water would freeze at operating temperatures below 32 °F, the propylene glycol solution has a reduced freezing point and remains a liquid at the test temperatures. The potential for a phase change in the test solution introduces test variability as

solid and liquid water have different heat transfer properties, and if the phase change occurs during a test, the measured temperature during the phase change may not represent actual storage temperatures.

For BVMs, the target test condition of 36 °F is above the freezing point of water and other liquids likely to be used for testing BVMs. As a result, DOE has tentatively determined that specifying an alternative propylene glycol solution for testing BVMs is not likely to reduce test variability as is the case when testing other types of equipment at temperatures below the freezing point of water. Additionally, requiring the use of a propylene glycol solution would increase test burden compared to the existing test approach, which allows more flexibility and does not require the preparation of a test solution. For these reasons, DOE is not proposing to amend the existing test procedure provisions regarding the specifications of the standard product.

#### 4. Lowest Application Product Temperature

Section 2.1.1 of appendix B requires that the integrated average temperature (“IAT”) of the BVM be 36 °F  $\pm$  1 °F over the test period. See table B.1 of appendix B. For BVMs only capable of operating at temperatures higher than the specified IAT of 36 °F  $\pm$  1 °F, section 2.1.3 of appendix B requires testing at the BVM’s lowest application product temperature (“LAPT”).

DOE’s compliance certification database<sup>11</sup> lists all BVM models certified to DOE, including the LAPT used for rating each model, if applicable. Of the 153 individual models included in the compliance certification database at the time of this analysis, 9 individual models (representing 3 basic models) from one manufacturer are rated at LAPTs ranging from 37.9 °F to 41.3 °F. Additional models had previously been certified to DOE (but are not included in the current DOE compliance certification database) as being rated at a LAPT below the 36 °F  $\pm$  1 °F IAT range required in the DOE test procedure. For example, models from one manufacturer were previously rated at an IAT of 32 °F, indicating that those BVMs could not operate at 36 °F  $\pm$  1 °F.

In the May 2021 RFI, DOE requested comment on whether the LAPT provisions are appropriate for testing BVMs not capable of maintaining an IAT of 36 °F  $\pm$  1 °F. 86 FR 27054, 27059. DOE further requested comment on

whether appendix B should include additional instructions for testing BVMs only capable of maintaining temperatures below the specified 36 °F  $\pm$  1 °F. *Id.*

In response to the May 2021 RFI, the CA IOUs recommended that DOE require BVMs to operate during testing at or below the standard temperature in ANSI/ASHRAE Standard 32.1–2017 to ensure that all BVMs are tested consistently, instead of the current test procedure, which allows for testing at the lowest application product temperature. (CA IOUs, No. 6, p. 2)

DOE acknowledges that the LAPT provisions result in some BVMs being tested at a higher temperature than those capable of maintaining the required test IAT. However, for BVMs not capable of operating with temperatures of 36 °F  $\pm$  1 °F, the LAPT test provisions are representative of the actual operation of those models. Accordingly, the LAPT test provisions measure the energy use of those BVMs during a representative average use cycle or period of use as required by EPCA. (42 U.S.C. 6293(b)(3)) Additionally, any models tested and rated under the LAPT provisions are identified in DOE’s compliance certification database, along with the actual IAT maintained during testing for those models, so that such information is available to customers making purchasing decisions.

DOE is proposing to maintain the current LAPT provisions and add an additional provision for testing BVMs that are only capable of maintaining temperatures below the 36 °F  $\pm$  1 °F range. For these units, DOE proposes to test at the highest thermostat setting. This would allow for testing the BVM under the setting closest to the required IAT. DOE proposes to amend the definition of LAPT in section 1.2 of appendix B to the following:

“Lowest application product temperature” means the following:

(a) For units that operate only at temperatures above the integrated average temperature specified in Table 1 of ANSI/ASHRAE Standard 32.1–2017: The lowest integrated average temperature a given basic model is capable of maintaining so as to comply with the temperature stabilization requirements specified in Section 7.2.2.2 of ANSI/ASHRAE Standard 32.1–2017.

(b) For units that operate only at temperatures below the integrated average temperature specified in Table 1 of ANSI/ASHRAE Standard 32.1–2017: The highest integrated average temperature a given basic model is capable of maintaining so as to comply with the temperature stabilization requirements specified in Section 7.2.2.2 of ANSI/ASHRAE Standard 32.1–2017.

<sup>10</sup> See 10 CFR part 431, subpart C, appendix B, which incorporates by reference ANSI/ASHRAE Standard 72–2005, (“ANSI/ASHRAE 72–2005”), “Method of Testing Commercial Refrigerators and Freezers.” Section 6.2.1 of ANSI/ASHRAE 72–2005 specifies the use of propylene glycol solution in test simulators.

<sup>11</sup> Available at [www.regulations.doe.gov/certification-data](http://www.regulations.doe.gov/certification-data).

DOE has tentatively determined that this proposal would not affect current BVM ratings or testing costs because DOE has not identified any BVMs currently available on the market that would be tested under the newly proposed provision addressing units that operate only at temperatures below the IAT of 36 °F ± 1 °F.

DOE requests comment on its initial determination to maintain the existing LAPT approach for units that operate only at temperatures above the IAT of 36 °F ± 1 °F. DOE requests comment on its proposal to require testing at the highest integrated average temperature a given basic model is capable of maintaining for units that are only capable of operating at temperatures below the specified IAT of 36 °F ± 1 °F.

5. Payment Mechanisms

Section 2.2.5.1 of appendix B requires testing BVMs with no payment mechanism in place, the payment mechanism in-place but de-energized, or the payment mechanism in place but set to the lowest energy consuming state, if it cannot be de-energized. A default payment mechanism energy consumption value of 0.20 kilowatt-hours per day (“kWh/day”) is added to the measured energy consumption, according to section 2.3 of appendix B. In Section 7.1.2.2. of ANSI/ASHRAE Standard 32.1–2017, payment mechanisms are required to be disconnected during testing.

In the July 2015 Final Rule, DOE determined that because payment mechanisms are variable and are not always included in the machine at the time of sale, it is difficult to unambiguously specify a “representative” payment mechanism or device combination. 80 FR 45758, 45776. DOE concluded that conducting physical testing of BVMs with no payment mechanisms installed, as

opposed to testing with the payment mechanisms in place, is the most straightforward, repeatable, and unambiguous approach. *Id.* Because payment mechanisms are integral to the vending function of BVMs, DOE established the 0.20 kWh/day value based on a weighted average energy consumption of 25 different payment mechanisms available at the time of the July 2015 Final Rule, which included 11 coin mechanisms, 11 bill validators, and 3 credit card readers. 80 FR 45758, 45777.

Since the publication of the July 2015 Final Rule, the prevalence of different payment mechanisms for BVMs may have shifted. For example, credit card readers may be more common in the field compared to coin mechanisms or bill validators, or BVMs may incorporate multiple types of payment mechanisms. Based on the July 2015 Final Rule data, credit card readers had the highest idle mode power consumption. 80 FR 45758, 45777. If such a shift has occurred in the market, an amended payment mechanism energy adder may provide results that are more representative of average energy use. Alternatively, a direct test of energy consumption rather than a fixed energy use adder may be more representative of average energy use.

In the May 2021 RFI, DOE requested comment on whether BVMs are typically sold with payment mechanisms in place. 86 FR 27054, 27059. If not, DOE requested information on the types of payment mechanisms typically installed on BVMs and their associated energy use. *Id.*

DOE did not receive any feedback on whether BVMs are typically sold with payment mechanisms.

Based on a survey of units currently available on the market, DOE has observed that coin and bill payment

mechanisms are typically included with BVMs as sold or shipped, but that credit card readers are typically sold as an optional feature and are sold separately from the BVM. DOE does not have data regarding the relative use of credit card readers as compared to coin and bill payment mechanisms.

In the May 2021 RFI, DOE additionally requested feedback on whether the current 0.20 kWh/day energy use assigned to payment mechanisms is representative of the current BVM market. 86 FR 27054, 27059.

ASAP and NRDC commented that 0.2 kWh/day may not be representative of the current market and that in the case of a BVM shipped without a payment mechanism, it would make sense to specify a default value that represents the most energy-consuming payment mechanism. (ASAP and NRDC, No. 4, p. 2) ASAP and NRDC, as well as the CA IOUs, commented that DOE should include a direct test of the energy use of payment mechanisms in the test procedure, stating that individual payment mechanism energy use can vary significantly and may depend on integrated “smart functionality.” (ASAP and NRDC, No. 4, p. 2; CA IOUs No. 6, p.3)

DOE conducted a review of currently available payment mechanisms to determine whether the previously derived 0.20 kWh/day default payment mechanism energy consumption is appropriate. DOE reviewed manufacturer specifications for 3 coin changers, more than 30 bill validators, and 2 credit card readers. A summary of the calculated daily energy consumptions for each payment mechanism type based on the manufacturer specifications is presented in Table III.1.

TABLE III.1—PAYMENT MECHANISM ENERGY CONSUMPTION SUMMARY

Payment mechanism type	Average calculated daily energy consumption (kWh/day)	Range of calculated daily energy consumption (kWh/day)
Coin Changer .....	0.07	0.01 to 0.12
Bill Validator .....	0.11	0.04 to 0.17
Credit Card Reader .....	0.10	0.07 to 0.12

As stated, DOE has observed that coin and bill payment mechanisms are typically included with BVMs as shipped, and that credit card readers are an additional accessory provided by the manufacturer as an option or sold separately. DOE has tentatively

determined that requiring a payment mechanism that is included with a BVM as shipped (*i.e.*, the coin and bill payment mechanism) to be energized during testing would provide a more representative measure of energy use compared to the current default value

specified in the test procedure. DOE is proposing to amend the test procedure to require that if a BVM is shipped with coin and/or bill payment mechanisms in place, the payment mechanisms shall be energized during testing. Because credit card readers are more likely to be

optional features or sold separately, DOE is proposing to maintain the existing approach in which credit card payment mechanisms would be disconnected or de-energized, if possible, or in place but set to the lowest energy consuming state, if it cannot be de-energized, for testing.

To account for the possibility that a BVM may be shipped with no payment mechanism in place, DOE is proposing to maintain the 0.20 kWh/day energy use adder to represent the energy consumption of a payment mechanism during representative use. Based on the identified payment mechanism energy use data, 0.20 kWh/day is near the average energy use of a coin changer plus a bill validator, which DOE observed is the typical default payment mechanism setup. DOE is not proposing an energy use adder based on the most energy-consuming payment mechanisms, as recommended by ASAP and NRDC, to ensure that the energy consumption as measured from testing reflects operation during a representative average use cycle or period of use.

Because the proposal to test BVMs with energized coin and bill payment mechanisms, when included with a BVM as shipped, would likely affect existing BVM energy use ratings, DOE is proposing that these particular amendments would not be required for use until the compliance date of any future amended energy conservation standards for BVMs, should such standards be adopted. As such, DOE has tentatively determined that manufacturers would not be required to re-test or re-certify BVMs as a result of the proposed payment mechanism approach. DOE has also tentatively determined that manufacturers would incur no additional costs related to this proposal. On the compliance date of any amended energy conservation standards for BVMs, should such standards be adopted, this proposal would only require re-testing for any BVMs shipped with coin or bill payment mechanisms in place. For all other BVMs, the existing test procedure approach would remain unchanged.

DOE requests comment on its proposal to require testing with coin and bill payment mechanisms energized, if they are included in the BVM as shipped. DOE requests comment on whether this approach would result in any additional test burden. DOE additionally requests comment on its proposal to require that any credit card payment mechanisms be disconnected or de-energized, if possible, or in place but set to the lowest energy consuming state, if they

cannot be de-energized, for testing. DOE further requests information on the continued use of the 0.20 kWh/day energy use adder for BVMs shipped with no coin or bill payment mechanisms in place. DOE also requests comment on the proposal to not require the use of these amendments until the compliance date of any future amended energy conservation standards for BVMs.

#### 6. Low Power Modes

Appendix B incorporates definitions and test requirements for two types of low power modes<sup>12</sup> (*i.e.*, accessory low power mode and refrigeration low power mode). Section 7.2.2.6.2 of ANSI/ASHRAE Standard 32.1–2017 requires that low power modes not be allowed to operate during testing.

In the July 2015 Final Rule, DOE acknowledged that the two types of low power modes incorporated into the test procedure may not address all forms of low power modes available in the BVM market. 80 FR 45758, 45786. DOE identified “learning-based” energy management controls that use historic sales and traffic data to predict times of high and low traffic; however, DOE did not propose a test procedure for such controls, determining that it would be difficult to develop a repeatable test procedure to evaluate the energy savings of such controls during a 24-hour test in a laboratory. *Id.*

In the May 2021 RFI, DOE requested comment on the availability of additional low power modes, including any “learning-based” energy management controls, and on whether such modes should be included in the test procedure. 86 FR 27054, 27060.

NEEA and NPCC recommended that DOE consider the energy benefits of “learning-based” energy management controls and include them in the test procedure. NEEA and NPCC noted that while energy savings from these technologies is still unknown, their research shows a trend in this technology being implemented into BVMs. NEEA and NPCC cited claims that “smart” features can provide up to 1,600 kWh in energy savings per year. (NEEA and NPCC, No. 7, p. 2)

DOE expects that the impacts of any learning-based controls would vary based on specific field installation and usage scenarios. DOE is not aware of, and interested parties have not

<sup>12</sup> “Low power mode” means a state in which a beverage vending machine’s lighting, refrigeration, and/or other energy-using systems are automatically adjusted (without user intervention) such that they consume less energy than they consume in an active vending environment. Section 1.2, appendix B.

provided, any data that could be used to determine the impacts of learning-based controls on energy use (for example, by increasing the amount of time spent in either accessory low power mode or refrigeration low power mode, rather than vending mode). DOE also tentatively maintains its prior determination that it would be difficult to develop a repeatable and reproducible test procedure to evaluate the energy savings of such controls during a 24-hour test in a laboratory. For these reasons, DOE is not proposing to account for “learning-based” controls in the test procedure at this time. DOE has tentatively determined to continue accounting for operation in accessory low power mode and refrigeration low power mode, as described in the following sections.

DOE requests comment on its tentative determination to not account for learning-based controls. DOE continues to seek data and information on the implementation and operation of such controls for BVMs.

#### a. Accessory Low Power Mode

Section 1.2 of appendix B defines accessory low power mode as a state in which a BVM’s lighting and/or other energy-using systems are in low power mode, but that is not a refrigeration low power mode. Functions that may constitute an accessory low power mode may include, for example, dimming or turning off lights, but does not include adjustment of the refrigeration system to elevate the temperature of the refrigerated compartment(s). Section 2.2.4 of appendix B states that accessory low power mode may be engaged for the final 6 hours of the 24-hour test period and requires that the BVM be operated in the lowest energy-consuming lighting and control settings for testing this mode. Section 2.2.4 also requires that any automatic activation of refrigeration low power modes be prevented during the accessory low power mode test period.

The 24-hour test procedure starts after a BVM achieves stabilization as determined in vending mode. See section 2.1.1.1 of appendix B. Because the test period ends with 6 hours of operation in accessory low power mode, when the mode is engaged for testing, the BVM would end the test in a different operating state than at the start of the test. Although the refrigeration system and cabinet temperatures would likely not change with operation in an accessory low power mode (because accessory low power mode does not include adjustment of the refrigeration system to elevate the temperature of the refrigerated compartment), some

transient recovery period may be required for a BVM to return to stable operation in vending mode after operating in accessory low power mode for 6 hours. If such a recovery period exists, testing the accessory low power mode during the middle of the 24-hour test period may be more representative by capturing any transition periods between operating modes.

In the May 2021 RFI, DOE requested comment on whether BVMs require any recovery period following operation in accessory low power mode to return to stable operation in vending mode. 86 FR 27054, 27060. Additionally, DOE requested information on any drawbacks or potential test burdens that would result from testing the accessory low power mode during a period other than at the end of the 24-hour test period. *Id.*

DOE did not receive comments on this topic. Through testing, DOE has observed that measured temperatures remain unchanged during operation in vending mode and accessory low power mode. The existing test approach also limits test burden by requiring only one operating mode transition during the 24-hour test period. Moving the accessory low power mode operating period to a period other than at the end of the 24-hour test period may require technicians to provide additional input to the unit during the test (*i.e.*, once to enter accessory low power mode and again to re-enter vending mode), depending on the BVM's controls. For these reasons, DOE is not proposing any changes to the current test procedure approach of requiring accessory low power mode to be tested at the end of the 24-hour test period.

In the July 2015 Final Rule, DOE stated that BVMs may employ a variety of control strategies and control a variety of different components in accessory low power mode. 80 FR 45758, 45785. DOE established testing under the settings representing the maximum energy savings to avoid potential repeatability issues associated with identifying test control settings for BVMs with various types of accessory low power modes. *Id.*

In the May 2021 RFI, DOE also requested comment on the typical average duration a BVM operates in accessory low power mode per day, what control settings users apply for accessory low power mode in the field, and whether multiple accessory low power mode test settings may be appropriate for BVMs with various control settings. 86 FR 27054, 27060.

The CA IOUs commented that the current DOE test method (18 hours of normal operation and 6 hours of

accessory low power mode) may not be fully representative of the most common locations and that DOE should conduct further research to verify this schedule. (CA IOUs, No. 6, p. 3)

DOE acknowledges that BVMs may be used in a variety of locations and that the actual duration of accessory low power mode use will vary based on installation location. In the NOPR preceding the July 2015 Final Rule, DOE stated that the 6-hour duration was selected as a representative length of time for the low power mode test period based on the fact that it is intended to represent off hours between periods of vending when the facility may be closed or have low occupancy. 79 FR 46908, 46926. While DOE recognized that there are a range of types of low power mode controls and time periods for which these controls are enabled, DOE determined that a timeframe of 6 hours was a reasonable representation of average field use. *Id.*

DOE is not aware of data indicating that durations other than the currently defined 6 hours would be more representative of typical BVM operation in accessory low power mode. The intent of the accessory low power mode test period remains unchanged from the July 2015 Final Rule approach (*i.e.*, representing off hours between periods of vending when the facility may be closed or have low occupancy). Given the lack of any data supporting a change to this approach, DOE is not proposing any changes to the 6-hour duration for accessory low power mode testing.

#### b. Refrigeration Low Power Mode

Section 1.2 of appendix B defines refrigeration low power mode as a state in which a BVM's refrigeration system is in low power mode because of elevation of the temperature of the refrigerated compartment(s). Section 2.3.2.1 of appendix B includes provisions for confirming the presence of a refrigeration low power mode, either through an increase in average next-to-vend beverage temperature or lack of compressor operation. Unlike accessory low power mode, appendix B does not include a direct test of refrigeration low power mode. Instead, BVMs with refrigeration low power mode receive a 3-percent reduction in DEC as measured. Section 2.3.2 of appendix B.

In the July 2015 Final Rule, DOE determined that a 3-percent energy reduction was more appropriate than a physical test of refrigeration low power mode because refrigeration low power modes are extremely variable in their control strategies and operation and may require instructions from the

manufacturer to accommodate specific provisions of a physical test. 80 FR 45758, 45785. DOE stated that a physical test would reduce consistency and repeatability and would make the method impractical to implement. *Id.*

DOE established the 3-percent credit for refrigeration low power mode by testing several BVMs with this mode. DOE noted in the July 2015 Final Rule that this value is an average that is representative of the common types of refrigeration low power modes available in the marketplace. 80 FR 45758, 45786.

In the May 2021 RFI, DOE requested comment on whether any amendments are needed to the definition of refrigeration low power mode or the corresponding refrigeration low power mode validation test method. 86 FR 27054, 27060. Additionally, DOE requested comment on whether any other BVM operating modes should be considered a refrigeration low power mode but cannot meet the current definition or validation test method (*e.g.*, operating modes with little or no increase in refrigerated compartment temperature with some amount of compressor operation). *Id.*

DOE did not receive any comment on these topics and is not proposing any changes to the current refrigeration low power mode and validation test method.

In the May 2021 RFI, DOE also requested comment on the current approach of applying a 3-percent energy reduction for any BVMs with a refrigeration low power mode. 86 FR 27054, 27060. Specifically, DOE asked for comment regarding whether a physical test to account for energy reduction associated with the low power mode is feasible, whether any test method currently exists, and the burden associated with running such a test. *Id.*

ASAP and NRDC, and the CA IOUs encouraged DOE to include a direct physical test instead of a fixed credit for refrigeration low power mode testing and to incorporate the resulting energy consumption into the daily energy consumption calculation. (ASAP and NRDC, No. 4, p. 1; CA IOUs, No. 6, p. 2) ASAP and NRDC also stated that the 3-percent credit may be inhibiting further improvements by failing to differentiate between refrigeration low power mode control strategies. (ASAP and NRDC, No. 4, p. 1) ASAP and NRDC stated that the accessory low power mode test could potentially be expanded to capture refrigeration low power modes, including a recovery period. (*Id.*) The CA IOUs suggested that the refrigeration low power mode test procedure should include an evaluation of the time and energy to return the

standard product to an IAT of 36 °F ± 1 °F, since the test may cause temperatures to drift. The CA IOUs estimated that this would be a primarily passive test and would likely only add 30 minutes of active work to the test method. (CA IOUs, No. 6, p. 2)

Based on a review of operating instructions for BVMs currently available with refrigeration low power mode, DOE has tentatively determined that the challenges of implementing a refrigeration low power mode test would remain the same as those considered in the July 2015 Final Rule. Specifically, DOE observed that the implementation of refrigeration low power mode would depend on the specific control parameters entered by the user or installer regarding duration, operating temperatures, and operation of the refrigeration system. Additionally, establishing a consistent, repeatable test (*i.e.*, measuring refrigeration low power mode operation over a defined duration from initiation of the low power mode until temperature recovery to the specified test temperature) may require specific instructions from the manufacturer to modify the controls in such a way to accommodate the specific requirements of a physical test. Testing on a consistent basis would also likely require an iterative process to identify the appropriate test settings. Due to the difficulty of accounting for the wide variety of refrigeration low power modes in a consistent, fair, and reasonable manner, as well as the potential burden of any such test approach, DOE is not proposing any changes to the current calculation approach to account for operation in refrigeration low power mode.

DOE is also not proposing any changes to the 3-percent credit as the energy reduction associated with refrigeration low power mode. DOE acknowledges that the actual energy impact of refrigeration low power mode would vary depending on the user-specified control parameters for that mode, including duration and temperature settings or refrigeration system control. The investigative testing used to determine the 3-percent credit assumed 6 hours of operation in refrigeration low power mode, including the time needed for temperature recovery. 79 FR 46908, 46925–46926. DOE is not proposing any changes to the 6-hour test period for accessory low power mode, and therefore is maintaining the estimate of refrigeration low power mode impact based on that same duration.

DOE requests comment on its initial determination to maintain the existing

calculation approach to account for operation in refrigeration low power mode. DOE continues to seek information and data on whether the assumed operating period (6 hours) and corresponding energy consumption impact (3 percent) are appropriate for BVMs operating in refrigeration low power mode.

#### 7. Reloading and Recovery Period

The existing DOE test procedure considers BVM performance only during stable operation (including any operation in accessory low power mode). During typical use, BVMs are regularly opened and restocked with warmer beverages. Accounting for BVM energy use during restocking periods and the subsequent product temperature recovery periods may better represent the actual energy use of BVMs during normal operation.

As stated in section III.B, ANSI/ASHRAE Standard 32.1–2017 provides an additional recovery test to determine the temperature recovery time of the BVM when loaded with product at a certain temperature, whereas appendix B contains no such test. This recovery test does not include a measurement of the corresponding energy consumption. Table 2 in ANSI/ASHRAE Standard 32.1–2017 specifies the reloaded sealed-beverage temperature, 90 °F, and the final instantaneous average next-to-vend beverage temperature, 40 °F, for the recovery test. Additionally, Table 4 in ANSI/ASHRAE Standard 32.1–2017 lists the door open durations, between 10 and 20 minutes, required during the recovery test while reloading the BVM.

In the May 2021 RFI, DOE requested comment and supporting data on whether BVM restocking represents a significant energy consumption for BVMs. 86 FR 27054, 27061. DOE also requested comment and supporting data regarding the applicability of the recovery test described in ANSI/ASHRAE Standard 32.1–2017. *Id.* DOE additionally requested comments and supporting data on the frequency and duration of door openings for reloading BVMs. *Id.*

DOE did not receive any comments on these topics in response to the May 2021 RFI. Based on typical operating descriptions provided in vending industry websites,<sup>13</sup> DOE expects that BVM restocking events are relatively infrequent, on the order of once per week, while the remainder of BVM operating time is spent in stable

<sup>13</sup> See [blog.vendnetusa.com/how-often-should-you-restock-your-vending-machines/](https://blog.vendnetusa.com/how-often-should-you-restock-your-vending-machines/) and [www.vendnm.com/often-restock-inspect-vending-machine/](https://www.vendnm.com/often-restock-inspect-vending-machine/), which both refer to restocking once per week.

operation. DOE has tentatively determined that the current test procedure based on stable operation measures energy consumption during a representative average use cycle or period of use and is therefore not proposing any additional testing to account for reloading events.

#### 8. Alternate Refrigerants

In an April 10, 2015 final rule, the Environmental Protection Agency listed propane (R–290), isobutane (R–600a), and the hydrocarbon blend R–441A as acceptable refrigerants for use in BVMs, subject to a 150-gram charge limit per refrigeration circuit and other safety measures to address flammability. 80 FR 19454, 19491. Due to the flammability of these refrigerants, BVMs using hydrocarbon refrigerants may need to implement additional controls and components to mitigate the risk of ignition from any potential refrigerant leaks. The need for such controls also may vary depending on the intended installation location for BVMs.

In the May 2021 RFI, DOE requested comment on what additional components and controls manufacturers may need to add to their equipment when designing BVMs with alternative refrigerants. 86 FR 27054, 27061. DOE also requested comment on the typical settings used for such components and controls, if multiple settings are available. *Id.* DOE additionally requested comment on whether any test procedure modifications are necessary to account for the energy consumption associated with these components and controls and any corresponding impact on testing burden. *Id.*

NAMA commented that the industry is currently partnered with Oak Ridge National Laboratory (“ORNL”) under a cooperative research and development agreement (“CRADA”) to collect information to inform how low global warming potential (“low-GWP”) refrigerants can be used to increase energy efficiency and comply with safety standards. NAMA stated that manufacturers and engineers at ORNL are currently focused on designing to protect against inadvertent leaks of flammable refrigerants and this technology may use a small amount of energy. Because of this, NAMA commented that any test procedure should not include the energy use of such safety measures. NAMA urged DOE to postpone amendments to test procedures until this research is concluded. (NAMA, No. 5, p. 2)

The current BVM test procedure requires that, unless specified otherwise, all standard components that would be used during normal operation



of the basic model in the field and are necessary to provide sufficient functionality for cooling and vending products in field installations (*i.e.*, product inventory, temperature management, product merchandising (including, *e.g.*, lighting or signage), product selection, and product transport and delivery) shall be in place during testing and shall be set to the maximum energy-consuming setting if manually adjustable. Section 2.2.5 of appendix B. Appendix B further requires that components not necessary for the inventory, temperature management, product merchandising (*e.g.*, lighting or signage), product selection, or product transport and delivery shall be de-energized, or if they cannot be de-energized without preventing the operation of the machine, then they shall be placed in the lowest energy consuming state. *Id.* Any components with controls that are permanently operational and cannot be adjusted by the machine operator shall be operated in their normal setting. *Id.*

Leak mitigation controls are a component that may be offered on BVMs. To the extent that leak mitigation controls are a user controllable accessory (*i.e.*, if they can be turned off), BVMs are able to provide product inventory, temperature management, product merchandising, product selection, and product transport and delivery without the leak mitigation controls functioning. If the leak mitigation controls are permanently operational and cannot be adjusted by the user, the controls would always be operating in their normal setting. Section 2.2.5 of appendix B specifies test settings for accessories, including those not required for normal BVM operation and those with permanently operational controls. Because section 2.2.5 of appendix B already provides accessory test instructions, DOE has tentatively determined that this section currently addresses the use of leak mitigation controls during testing, but recognizes that further specification may help ensure reproducible testing. DOE is therefore proposing to amend the test procedure to provide specific instructions regarding the use of leak mitigation controls consistent with the existing requirements in appendix B. Specifically, DOE is proposing to specify in newly added section 2.2.5.11 of appendix B that if the use of leak mitigation controls is a user-controlled function (*e.g.*, if the use of the controls is optional and intended only for specific installations), the controls would be de-energized or in their lowest energy consuming state during testing. If

leak mitigation controls are not user-controlled and are always operational, DOE is proposing that the controls would be operational for testing.

DOE acknowledges that the investigative work regarding leak mitigation is ongoing. However, if leak mitigation controls always operate and cannot be de-energized by the user, accounting for the energy use of such controls would ensure that the DOE test procedure measures energy consumption during a representative average use cycle or period of use as required by EPCA. (42 U.S.C. 6293(b)(3))

As discussed, the proposed instructions regarding leak mitigation controls are consistent with the existing requirements in section 2.2.5 of appendix B. Therefore, DOE does not expect the proposed amendments to affect current BVM ratings or result in any additional testing costs.

DOE requests comment on the proposed instructions regarding leak mitigation control settings for BVM testing. Specifically, DOE requests information regarding how such controls are currently or expected to be implemented in BVMs, including whether the controls can be controlled by the user.

The CA IOUs commented to encourage the adoption of low-GWP alternative refrigerants in this and other relevant rulemakings, noting that the use of R-134a in new vending machines has been banned in California since January 1, 2019. The CA IOUs stated that as of June 10, 2021, several BVM manufacturers continue to provide R-134a systems, but that alternate refrigeration-based BVMs are growing in market share. The CA IOUs urged DOE to consider refrigerant choice as an efficiency design option for this rulemaking. The CA IOUs also recommended that DOE monitor ANSI/ASHRAE Standard 15-2019 "Safety Standard for Refrigeration Systems" ("ANSI/ASHRAE 15-2019") and UL Standard 541 "Refrigerated Vending Machines" ("UL 541") to ensure that the new test procedure will reflect the dynamic regulatory market around refrigerants. (CA IOUs, No. 6, p. 3)

DOE has tentatively determined that the use of alternative refrigerants in BVMs does not require any specific amendments or instructions in the test procedure, except as noted with respect to leak mitigation controls. Additionally, the test procedure proposed in this NOPR, as well as the test procedure currently required for use, measures any energy efficiency benefits of alternative refrigerants. The use of alternative refrigerants to improve the efficiency of BVMs may be

considered as a technology option in the analysis for any rulemaking to consider amended energy conservation standards for BVMs. DOE is monitoring ANSI/ASHRAE 15-2019 and UL 541 to determine the applicability of alternative refrigerants to the BVM market.

#### 9. Connected Functions

The current DOE test procedure for BVMs does not include specific test requirements regarding connected or smart features, but section 2.2.5 of appendix B provides instructions regarding accessories. Section 2.2.5 of appendix B generally requires all components necessary to provide sufficient functionality for cooling and vending products in field installations (*i.e.*, product inventory, temperature management, product merchandising (including, *e.g.*, lighting or signage), product selection, and product transport and delivery) to be in place during testing and set to the maximum energy-consuming setting if manually adjustable. Other components not necessary for such functionality are de-energized or set to their lowest energy consuming state.

In the May 2021 RFI, DOE requested comment on the prevalence of connected functions, the BVM functions associated with them, how often they are used, and their corresponding energy use impacts. 86 FR 27054, 27061. DOE also requested comment on whether the existing DOE test procedure instructions for accessories in section 2.2.5 of appendix B adequately address test settings for connected functions. *Id.* NEEA and NPCC recommended that DOE include all energy consuming accessories or features in the BVM test procedure because their research indicates a trend in "intelligent" vending machines. NEEA and NPCC noted that these vending machines offer several additional features including the following: Machine/inventory management, flexible payment options, remote communication, Wi-Fi, phone charging, printing, and UV light sanitation. (NEEA and NPCC, No. 7, p. 2,3)

ASAP and NRDC commented that the existing DOE test provisions regarding de-energizing non-essential accessories may affect connected functions that impact the overall energy use of a BVM, and encouraged DOE to investigate and capture the energy consumption associated with the connected functions that would normally be de-energized during testing. (ASAP and NRDC, No. 4, p. 3)

Based on a review of BVMs available on the market, the types of connected

functions identified in the NEEA and NPCC comment do not appear to be common. Additionally, DOE lacks information on how frequently such functions would be used on BVMs with such functions. Without this data, DOE has no information to suggest that the current testing approach would produce results that are unrepresentative of an average use cycle or period of use. DOE therefore is not proposing any changes to the current test procedure approach in section 2.2.5 of appendix B as applicable to connected functions. As described, this approach requires testing with connected functions energized if they are necessary to provide sufficient functionality for cooling and vending products in field installations. Connected functions that are not necessary to provide sufficient functionality for cooling and vending products in field installations are de-energized or placed in the lowest energy consuming state.

DOE requests comment on its tentative determination to maintain the existing test procedure approach in section 2.2.5 of appendix B as applicable to connected functions. DOE continues to request information and data on the prevalence of connected functions, the BVM functions associated with them, how often they are used, and their corresponding energy use impacts.

#### 10. Condenser Conditions

In response to the May 2021 RFI, CoilPod commented that condenser coils become clogged in service, significantly impacting energy efficiency, and that the test procedure does not account for such coil fouling. CoilPod questioned whether it would be possible for the test procedure to account for the lack of coil cleanings by BVM owners. CoilPod stated that energy savings of approximately 20 percent could result from coil cleaning units. (CoilPod, No. 3, p. 1)

DOE acknowledges that the energy consumption of BVMs can change over the lifetime of the equipment due to lack of maintenance or other factors. However, the DOE test procedure considers the performance of new BVMs without considering any potential long-term performance of the unit. Regarding the specific topic of condenser coil fouling, the end user is responsible for properly maintaining the BVM, including any condenser cleaning. Accordingly, DOE is not proposing to amend its test procedure to account for operation with clogged condensers.

While DOE does not account for lifetime energy consumption in its test procedures, it does consider energy consumption over the lifetime of the

equipment in the analysis conducted in support of developing potential amended energy conservation standards. In such an analysis, DOE may apply adjustment factors to consider performance degradation over time.

DOE requests any additional information and data on how BVM energy consumption may change over the lifetime of the equipment. DOE also requests comment on whether any performance degradation occurs consistently for all BVMs, or whether the impacts vary depending on equipment type or specific equipment designs.

#### 11. Removal of Obsolete Provisions

As discussed in section I.B, appendix B is required for testing BVMs manufactured on or after January 8, 2019. As such, appendix A is now obsolete for new units being manufactured. Therefore, DOE is proposing to remove appendix A. DOE is not proposing to redesignate appendix B as appendix A in order to avoid confusion regarding the appropriate version of the test procedure required for use.

Additionally, the introductory note to appendix B currently explains when manufacturers are required to use either appendix A or appendix B for compliance with energy conservation standards and representations of energy use. DOE is proposing to amend the introductory note to remove the obsolete instructions and to instead provide clarifying language regarding application of the payment mechanism provisions, as discussed in section III.C.5 of this document.

#### D. Test Procedure Costs and Harmonization

##### 1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for BVMs by referencing the most recent industry test standard, providing setup instructions for non-beverage shelves, updating the LAPT definition and instructions, requiring testing of coin and bill payment mechanisms if shipped with the BVM (but not until the compliance date of any amended energy conservation standards), specifying setup instructions for leak mitigation controls, and removing the obsolete appendix A. DOE has tentatively determined that these proposed amendments would not impact testing costs.

Other than the proposed amendment to measure coin and bill payment mechanisms, the proposals in this NOPR are generally consistent with the

requirements under the existing DOE test procedure. The proposed amendments harmonize with the industry standard or provide additional test instructions, but do not substantively change testing as currently required in appendix B. Accordingly, DOE has tentatively determined that manufacturers would be able to rely on data generated under the current test procedure should any of these additional proposed amendments be finalized, and would not incur additional costs as a result of the amended test procedure.

Regarding the proposal to test with coin and bill payment mechanisms energized, DOE does not expect this proposal to impact testing costs until the compliance date of any amended energy conservation standards for BVMs, should such standards be adopted. At that time, the proposal would only require re-testing for any BVMs shipped with coin or bill payment mechanisms in place. For all other BVMs, the existing test procedure approach would remain unchanged. For any BVMs requiring re-testing upon the compliance date of any amended energy conservation standards for BVMs, DOE estimates re-testing costs of approximately \$8,300 per basic model.<sup>14</sup>

DOE requests comment on the tentative determination that manufacturers would not incur any additional costs as a result of the proposed amended test procedure. DOE also requests comment on its estimate of per-test costs, should manufacturers re-test their BVM basic models to comply with any future amended BVM energy conservation standards.

In response to the May 2021 RFI, NAMA commented to express concern over ongoing business interruptions and economic hardships caused by the COVID-19 pandemic. NAMA stated that amending test procedures at this time would place an undue burden on the industry and urged DOE to postpone amending test procedures. (NAMA, No. 5, p. 1, 2)

As discussed, the proposed amendments would improve the clarity of the DOE test procedure while not substantively changing the existing test approach and the proposal to test with any coin and bill payment mechanisms energized would not be required for use

<sup>14</sup> DOE estimates that the BVM per-test cost is approximately \$4,150, which includes the testing costs associated with running the low-power mode tests (e.g., running the low power mode test with the optional refrigeration low power mode verification). For each certified basic model, DOE requires a sample size of two units ( $\$4,150 \times 2 = \$8,300$ ).

until the compliance date of any amended energy conservation standards for BVMs, should such standards be adopted. As a result, DOE has tentatively determined that the proposed amendments would not result in any additional costs for manufacturers and manufacturers would be able to rely on data generated under the current test procedure for BVMs already available on the market, until the compliance date of any amended energy conservation standards at which time any BVMs shipped with coin and bill payment mechanisms in place would be required to re-test.

## 2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. 10 CFR 431.4; Section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

As discussed, the test procedure at appendix B incorporates by reference ANSI/ASHRAE Standard 32.1–2010. This standard provides definitions, test conditions, and test methods for measuring refrigerated volume and energy consumption of BVMs. The industry standards that DOE proposes to incorporate by reference via amendments described in this notice are discussed in further detail in section IV.M of this document. DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for BVMs.

DOE notes that the BVM test procedure at appendix B includes a number of deviations to ANSI/ASHRAE Standard 32.1–2010. Specifically, appendix B only refers to certain sections of ANSI/ASHRAE Standard 32.1–2010, includes additional definitions, provides detailed setup and settings instructions, accounts for operation in low power modes and payment mechanism energy consumption, and provides rounding instructions. These deviations were established to limit test burden (*i.e.*, by not requiring additional testing as specified in ANSI/ASHRAE Standard

32.1–2010), improve representativeness, and improve repeatability and reproducibility of the DOE test procedure as compared to the procedure in ANSI/ASHRAE Standard 32.1–2010. As discussed in sections III.B and III.C of this NOPR, DOE is proposing to incorporate by reference the most recent version of the industry standard, ANSI/ASHRAE Standard 32.1–2017. This version of the standard addresses certain deviations between appendix B and ANSI/ASHRAE Standard 32.1–2010. For other deviations not addressed in ANSI/ASHRAE Standard 32.1–2017, DOE has tentatively determined that the existing deviations in appendix B are necessary and appropriate.

## IV. Procedural Issues and Regulatory Review

### A. Review Under Executive Order 12866 and 13563

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated

behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (“OIRA”) for review. OIRA has determined that this proposed regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: [energy.gov/gc/office-general-counsel](http://energy.gov/gc/office-general-counsel).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A))

Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (“IEC”) Standard 62301<sup>15</sup> and IEC Standard 62087<sup>16</sup> as applicable. (42 U.S.C. 6295(gg)(2)(A))

With respect to Refrigerated Bottled or Canned Beverage Vending Machines (“BVMs”), EPCA requires the test procedure to be based on the 2004 version of ANSI/ASHRAE Standard 32.1, “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.” (42 U.S.C. 6293(b)(15))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including BVMs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6293(b)(1)(A))

DOE is publishing this proposed rulemaking in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

In this NOPR, DOE proposes to update 10 CFR 431.294, “Uniform test method for the measurement of energy consumption of refrigerated bottled or canned beverage vending machines,” as follows:

(1) Incorporate by reference the current industry standard ANSI/ASHRAE Standard 32.1–2017.

(2) Incorporate by reference the industry standard ANSI/AHAM HRF–1–2008 referenced in ANSI/ASHRAE Standard 32.1–2017.

(3) Maintain the existing DOE test procedure requirements that are not included in ANSI/ASHRAE Standard 32.1–2017.

<sup>15</sup> IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

<sup>16</sup> IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

(4) Provide setup instructions for non-beverage shelves in refrigerated compartments.

(5) Amend the definition of LAPT to allow for testing BVMs only capable of operating at temperatures below the specified test temperature.

(6) Require testing of coin and bill payment mechanisms if shipped with the BVM (but not until the compliance date of any amended energy conservation standards).

(7) Specify setup instructions for leak mitigation controls consistent with the existing test procedure instructions.

(8) Remove the obsolete test procedure in appendix A.

For manufacturers of BVMs, the Small Business Administration (“SBA”) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The equipment covered by this rule is classified under North American Industry Classification System (“NAICS”) code 333318,<sup>17</sup> “Other Commercial and Service Industry Machinery Manufacturing.” The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

DOE reviewed its Compliance Certification Database (“CCD”) <sup>18</sup> and California Energy Commission’s Modernized Appliance Efficiency Database System (“MAEDbS”) <sup>19</sup> to create a list of companies that import, private label, produce or manufacture the products covered by this rulemaking. DOE relied on public data and subscription-based market research tools (e.g., reports from Dun & Bradstreet<sup>20</sup>) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer BVMs covered by this proposed rulemaking, do not meet the SBA’s definition of a “small business,” or are foreign-owned and operated.

DOE identified six original equipment manufacturers (“OEMs”) of BVMs sold in the United States. Of the six OEMs identified, three OEMs meet the SBA

<sup>17</sup> The size standards are listed by NAICS code and industry description and are available at: [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards) (Last accessed on December 22, 2021).

<sup>18</sup> U.S. Department of Energy’s Compliance Certification Database, available at: [www.regulations.doe.gov/certification-data](http://www.regulations.doe.gov/certification-data) (last accessed December 16, 2021).

<sup>19</sup> California Energy Commission’s Modernized Appliance Efficiency Database System, available at: [cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx](http://cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx) (last access December 16, 2021).

<sup>20</sup> The Dun & Bradstreet Hoovers subscription login is available online at [app.dnbhoovers.com/](http://app.dnbhoovers.com/)

definition of a “small business” and are not foreign-owned or operated.

In this NOPR, DOE proposes to amend the existing test procedure for BVMs by referencing the most recent industry test standard, providing setup instructions for non-beverage shelves, updating the LAPT definition and instructions, requiring testing of coin and bill payment mechanisms if shipped with the BVM (but not until the compliance date of any amended energy conservation standards), specifying setup instructions for leak mitigation controls, and removing the obsolete appendix A. DOE has tentatively determined that these proposed amendments would not impact testing costs.

Other than the proposed amendment to measure coin and bill payment mechanisms, the proposals in this NOPR are generally consistent with the requirements under the existing DOE test procedure. The proposed amendments harmonize with the industry standard or provide additional test instructions, but do not substantively change testing as currently required in appendix B. Accordingly, DOE has tentatively determined that manufacturers would be able to rely on data generated under the current test procedure should any of these additional proposed amendments be finalized, and would not incur additional costs as a result of the amended test procedure.

Regarding the proposal to test with coin and bill payment mechanisms energized, DOE does not expect this proposal to impact testing costs until the compliance date of amended energy conservation standards for BVMs, should such standards be adopted. At that time, the proposal would require re-testing for BVMs shipped with coin or bill payment mechanisms in place. DOE estimates that the cost for third-party lab testing is approximately \$8,300 per basic model. For all other BVMs, the existing test procedure approach would remain unchanged.

Although the re-testing of BVMs shipped with coin or bill payment mechanisms is not required at this time, DOE developed cost estimates for the three small BVM manufacturers,<sup>21</sup> should amended energy conservation standards be adopted in the future. For its analysis, DOE assumed that all the unique basic models identified in CCD and MAEDbS have coin or bill payment mechanisms and would need to be re-

<sup>21</sup> “Small BVM manufacturers” refers to the “small business” OEMs identified as the small entities that would be subject to this proposal, consistent with DOE’s policies and procedures. *See* 68 FR 7990.

tested. Additionally, DOE's cost estimate of \$8,300 per basic model includes the testing costs associated with running all the optional tests (*e.g.*, running the low power mode test with the optional refrigeration low power mode verification). DOE used these conservative assumptions in its analysis to avoid underestimating the potential test burden on small BVM manufacturers.

The three small BVM manufacturers, on average, offer 10 unique basic models and have an average annual revenue of approximately \$39.3 million.<sup>22</sup> DOE estimates that the average cost for a small BVM manufacturer to re-test all of their BVM basic models would be less than one percent of their annual revenue. The small BVM manufacturer with the highest expected test burden offers 19 BVM models and has an annual revenue of \$19.0 million. DOE estimates their re-testing costs could reach \$157,700,<sup>23</sup> which represents approximately 0.8 percent of their annual revenue.

DOE has tentatively determined that the proposed amendments in this NOPR would result in minimal cost impacts for small BVM manufacturers. Furthermore, these minimal re-testing costs would not be incurred unless and until amended energy conservation standards for BVMs are adopted and would only apply to BVM basic models shipped with coin or bill payment mechanisms in place. Therefore, DOE initially concludes that the impacts of the proposed test procedure amendments proposed in this NOPR would not have a "significant economic impact on a substantial number of small entities," and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE requests comment on the number of small BVM manufacturers and the cost impacts of this proposed rule on those small manufacturers.

### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of BVMs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data

for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including BVMs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. DOE is not proposing to amend the certification and recordkeeping requirements for BVMs.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

### D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for the BVM test procedure, "Uniform Test Method for the Measurement of Energy Consumption of Refrigerated Bottled or Canned Vending Machines". 10 CFR 431.294. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or

that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

### F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to

<sup>22</sup> DOE relied on the estimated annual revenue figures from Dun and Bradstreet to determine the annual revenue of the three small BVM manufacturers. (The D&B login is accessible at: [app.dnbhoovers.com/](http://app.dnbhoovers.com/))

<sup>23</sup> Testing costs of \$8,300 per basic model for 19 BVM models (\$8,300 x 19 = \$157,700).

determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at [energy.gov/gc/office-general-counsel](http://energy.gov/gc/office-general-counsel). DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at [www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring

the energy efficiency of BVMs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; “FEAA”) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (“FTC”) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for BVMs would incorporate testing methods contained in certain sections of the following commercial standards: ANSI/ASHRAE Standard 32.1–2017. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

#### *M. Description of Materials Incorporated by Reference*

In this NOPR, DOE proposes to incorporate by reference the 2017 test standard published by ANSI/ASHRAE, titled “Methods of Testing for Rating Refrigerated Vending Machines for Sealed Beverages.” ANSI/ASHRAE Standard 32.1–2017 is an industry-accepted test procedure that measures capacity and efficiency of BVMs. The test procedure proposed in this NOPR references various sections of ANSI/ASHRAE Standard 32.1–2017 that address definitions, test setup,

instrumentation, test conduct, and calculations. ANSI/ASHRAE Standard 32.1–2017 is readily available at ANSI's website at [webstore.ansi.org](http://webstore.ansi.org).

DOE also proposes to incorporate by reference the 2008 test standard published by ANSI/AHAM, titled "Energy And Internal Volume Of Refrigerating Appliances." ANSI/AHAM HRF–1–2008 is referenced by ANSI/ASHRAE Standard 32.1–2017 as the industry-accepted method for determining refrigerated volume for BVMs. By reference to ANSI/ASHRAE Standard 32.1–2017, the test procedure proposed in this NOPR refers only to the refrigerated volume section of ANSI/AHAM HRF–1–2008. ANSI/AHAM HRF–1–2008 can be purchased at [webstore.ansi.org/standards/aham/ahamhrf2008](http://webstore.ansi.org/standards/aham/ahamhrf2008).

## V. Public Participation

### A. Participation in the Webinar

The time and date for the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published at [www.regulations.gov/docket/EERE-2021-BT-TP-0007](http://www.regulations.gov/docket/EERE-2021-BT-TP-0007). Participants are responsible for ensuring their systems are compatible with the webinar software.

### B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov). Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

### C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record

the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

### D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.<sup>24</sup> Interested parties

<sup>24</sup> DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico ("NAFTA"), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–

may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via www.regulations.gov.* The [www.regulations.gov](http://www.regulations.gov) web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to [www.regulations.gov](http://www.regulations.gov) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through [www.regulations.gov](http://www.regulations.gov) cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through [www.regulations.gov](http://www.regulations.gov) before

182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) ("NAFTA Implementation Act"); and Executive Order 12889, "Implementation of the North American Free Trade Agreement," 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States ("USMCA"), Nov. 30, 2018, 134 Stat. 11 (*i.e.*, the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [www.regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

*Submitting comments via email.*

Comments and documents submitted via email also will be posted to [www.regulations.gov](http://www.regulations.gov). If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.*

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information

provided in the comments (except information deemed to be exempt from public disclosure).

*E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to incorporate by reference the most current industry test standard, ANSI/ASHRAE Standard 32.1–2017, including the updated reference to ANSI/AHAM HRF–1–2008 for measuring refrigerated volume. Specifically, DOE requests comment on whether the proposed amendments would affect BVM ratings as measured under the existing test procedure or whether they would impact test burden.

(2) DOE continues to request information on typical loads for non-refrigerated compartments in combination BVMs and, if DOE were to require such loads for testing, the potential impacts on combination BVM energy consumption and test burden.

(3) DOE requests comment on the proposal to specify that non-beverage merchandise shelves not be loaded for testing BVMs. DOE seeks information on how such models are currently tested and on whether this proposal would impact current BVM ratings or test burden.

(4) DOE requests comment on its initial determination to maintain the existing LAPT approach for units that operate only at temperatures above the IAT of  $36\text{ }^{\circ}\text{F} \pm 1\text{ }^{\circ}\text{F}$ . DOE requests comment on its proposal to require testing at the highest integrated average temperature a given basic model is capable of maintaining for units that are only capable of operating at temperatures below the specified IAT of  $36\text{ }^{\circ}\text{F} \pm 1\text{ }^{\circ}\text{F}$ .

(5) DOE requests comment on its proposal to require testing with coin and bill payment mechanisms energized, if they are included in the BVM as shipped. DOE requests comment on whether this approach would result in any additional test burden. DOE additionally requests comment on its proposal to require that any credit card payment mechanisms be disconnected or de-energized, if possible, or in place but set to the lowest energy consuming state, if they cannot be de-energized, for testing. DOE further requests information on the continued use of the 0.20 kWh/day energy use adder for BVMs shipped with no coin or bill payment mechanisms in place. DOE also requests comment on the proposal to not require

the use of these amendments until the compliance date of any future amended energy conservation standards for BVMs.

(6) DOE requests comment on its tentative determination to not account for learning-based controls. DOE continues to seek data and information on the implementation and operation of such controls for BVMs.

(7) DOE requests comment on its initial determination to maintain the existing calculation approach to account for operation in refrigeration low power mode. DOE continues to seek information and data on whether the assumed operating period (6 hours) and corresponding energy consumption impact (3 percent) are appropriate for BVMs operating in refrigeration low power mode.

(8) DOE requests comment on the proposed instructions regarding leak mitigation control settings for BVM testing. Specifically, DOE requests information regarding how such controls are currently or expected to be implemented in BVMs, including whether the controls can be controlled by the user.

(9) DOE requests comment on its tentative determination to maintain the existing test procedure approach in section 2.2.5 of appendix B as applicable to connected functions. DOE continues to request information and data on the prevalence of connected functions, the BVM functions associated with them, how often they are used, and their corresponding energy use impacts.

(10) DOE requests any additional information and data on how BVM energy consumption may change over the lifetime of the equipment. DOE also requests comment on whether any performance degradation occurs consistently for all BVMs, or whether the impacts vary depending on equipment type or specific equipment designs.

(11) DOE requests comment on the tentative determination that manufacturers would not incur any additional costs as a result of the proposed amended test procedure. DOE also requests comment on its estimate of per-test costs, should manufacturers re-test their BVM basic models to comply with any future amended BVM energy conservation standards.

(12) DOE requests comment on the number of small BVM manufacturers and the cost impacts of this proposed rule on those small manufacturers.

**VI. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notice of proposed



rulemaking and announcement of public meeting.

#### List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

#### Signing Authority

This document of the Department of Energy was signed on March 17, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 18, 2022.

**Treena V. Garrett**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE is proposing to amend part 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

#### PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 431.292 is amended by revising the definition for “V” to read as follows:

\* \* \* \* \*

V means the refrigerated volume (ft<sup>3</sup>) of the refrigerated bottled or canned beverage vending machine, as measured by Appendix C of ANSI/ASHRAE 32.1, including the referenced methodology in AHAM HREF–1–2008 (both incorporated by reference, see § 431.293).

■ 3. Section 431.293 is revised to read as follows:

#### § 431.293 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L’Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, [Buildings@ee.doe.gov](mailto:Buildings@ee.doe.gov), <https://www.energy.gov/eere/buildings/building-technologies-office>. For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). The material may be obtained from the sources in the following paragraphs of this section.

(b) **ASHRAE**. American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle NE, Atlanta, GA 30329; (404) 636–8400; [www.ashrae.org](http://www.ashrae.org).

(1) ANSI/ASHRAE Standard 32.1–2017, (“ANSI/ASHRAE 32.1”), “Methods of Testing for Rating Refrigerated Vending Machines for Sealed Beverages,” approved February 2, 2017, IBR approved for § 431.292 and appendix B to this subpart.

(2) [Reserved]

(c) **AHAM**. Association of Home Appliance Manufacturers, 1111 19th Street NW, Suite 402, Washington, DC 20036; (202) 872–5955; [www.aham.org](http://www.aham.org).

(1) AHAM HRF–1–2008 (“HRF–1–2008”), “Energy and Internal Volume of Refrigerating Appliances,” including *Errata to Energy and Internal Volume of Refrigerating Appliances*, Correction Sheet issued November 17, 2009, IBR approved for § 431.292 and appendix B to this subpart.

(2) [Reserved]

(d) **ASTM**. ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; (877) 909–2786; [www.astm.org](http://www.astm.org).

(1) ASTM E1084–86 (Reapproved 2009), “Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight,” approved April 1, 2009, IBR approved for § 431.292.

(2) [Reserved]

#### Appendix A to Subpart Q of Part 431 [Removed and Reserved]

- 4. Remove and reserve appendix A to subpart Q of part 431.
- 5. Appendix B to subpart Q of part 431 is revised to read as follows:

#### Appendix B to Subpart Q of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Refrigerated Bottled or Canned Beverage Vending Machines

**Note:** Any representations made with respect to energy use or efficiency to demonstrate compliance with the energy conservation standards at 10 CFR 431.296, for which compliance was required as of January 8, 2019 must be made in accordance with the results of testing pursuant to this appendix using the payment mechanism testing requirements specified in section 2.2.5.1(a) of this appendix. Any representations made on or after the compliance date of any amended energy conservation standards, must be made in accordance with the results of testing pursuant to this appendix and must use the payment mechanism testing requirements specified in section 2.2.5.1(b) of this appendix.

##### 0. Incorporation by reference.

DOE incorporated by reference in § 431.293 the entire standard for AHAM HRF–1–2008 and ANSI/ASHRAE 32.1; however, only enumerated provisions of those documents are applicable to this appendix as follows:

0.1. AHAM HRF–1–2008

(i) Section 4, “Method for Computing Refrigerated Volume of Refrigerators and Wine Chillers,” as referenced in section 3.1 of this appendix.

0.2. ANSI/ASHRAE 32.1

(i) Section 3 “Definitions” as referenced in section 1 of this appendix.

(ii) Section 4 “Instruments” as referenced in section 2 of this appendix.

(iii) Section 5 “Vending Machine Capacity” and Normative Appendix C “Measurement of Volume” as referenced in sections 2 and 3.1 of this appendix.

(iv) Section 6 “Test Conditions” as referenced in section 2 of this appendix.

(v) Section 7.1 “Test Procedures—General Requirements” (except Section 7.1.2 “Functionality” and Section 7.1.5.1 “Beverage Temperature Test Packages”) and Section 7.2 “Energy Consumption Test” (except Section 7.2.2.6) as referenced in section 2 of this appendix.

1. *General*. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over ANSI/ASHRAE 32.1.

1.1. *Definitions*. In addition to the definitions specified in Section 3, “Definitions,” of ANSI/ASHRAE 32.1 the following definitions are also applicable to this appendix.

*Accessory low power mode* means a state in which a beverage vending machine’s lighting and/or other energy-using systems are in low power mode, but that is not a refrigeration low power mode. Functions that

may constitute an accessory low power mode may include, for example, dimming or turning off lights, but does not include adjustment of the refrigeration system to elevate the temperature of the refrigerated compartment(s).

*External accessory standby mode* means the mode of operation in which any external, integral customer display signs, lighting, or digital screens are connected to mains power; do not produce the intended illumination, display, or interaction functionality; and can be switched into another mode automatically with only a remote user-generated or an internal signal.

*Low power mode* means a state in which a beverage vending machine's lighting, refrigeration, and/or other energy-using systems are automatically adjusted (without user intervention) such that they consume less energy than they consume in an active vending environment.

*Lowest application product temperature* means either:

(a) For units that operate only at temperatures above the integrated average temperature specified in Table 1 of ANSI/ASHRAE 32.1, the lowest integrated average temperature a given basic model is capable of maintaining so as to comply with the temperature stabilization requirements specified in Section 7.2.2.2 of ANSI/ASHRAE 32.1; or

(b) For units that operate only at temperatures below the integrated average temperature specified in Table 1 of ANSI/ASHRAE 32.1, the highest integrated average temperature a given basic model is capable of maintaining so as to comply with the temperature stabilization requirements specified in Section 7.2.2.2 of ANSI/ASHRAE Standard 32.1.

*Refrigeration low power mode* means a state in which a beverage vending machine's refrigeration system is in low power mode because of elevation of the temperature of the refrigerated compartment(s). To qualify as low power mode, the unit must satisfy the requirements described in section 2.3.2.1 of this appendix.

**2. Test Procedure.** Conduct testing according to Section 4, "Instruments"; Section 5, "Vendible Capacity"; Section 6, "Test Conditions"; Section 7.1, "Test Procedures—General Requirements" (except Section 7.1.2 "Functionality" and Section 7.1.5.1 "Beverage Temperature Test Packages"); and Section 7.2, "Energy Consumption Test" (except Section 7.2.2.6) of ANSI/ASHRAE 32.1, except as described in the following sections.

**2.1. Lowest Application Product Temperature.** If a refrigerated bottled or canned beverage vending machine is not capable of maintaining an integrated average temperature of 36 °F (±1 °F) during the 24 hour test period, the unit must be tested at the lowest application product temperature, as defined in section 1.1 of this appendix.

**2.2. Equipment Installation and Test Set Up.** Except as provided in this section 2.2 of this appendix, the test procedure for energy consumption of refrigerated bottled or canned beverage vending machines shall be conducted in accordance with the methods specified in Sections 7.1 through 7.2.2.7

under "Test Procedures" of ANSI/ASHRAE 32.1.

**2.2.1. Equipment Loading.** Configure refrigerated bottled or canned beverage vending machines to hold the maximum number of standard products.

**2.2.1.1. Non-Beverage Shelves.** Any shelves within the refrigerated compartment(s) intended only for non-beverage merchandise shall not be loaded for testing.

**2.2.1.2. Standard Products.** The standard product shall be standard 12-ounce aluminum beverage cans filled with a liquid with a density of 1.0 grams per milliliter (g/mL) ±0.1 g/mL at 36 °F. For product storage racks that are not capable of vending 12-ounce cans, but are capable of vending 20-ounce bottles, the standard product shall be 20-ounce plastic bottles filled with a liquid with a density of 1.0 g/mL ±0.1 g/mL at 36 °F. For product storage racks that are not capable of vending 12-ounce cans or 20-ounce bottles, the standard product shall be the packaging and contents specified by the manufacturer in product literature as the standard product (*i.e.*, the specific merchandise the refrigerated bottled or canned beverage vending machine is designed to vend).

**2.2.1.3. Standard Test Packages.** A standard test package is a standard product, as specified in section 2.2.1.2 of this appendix, altered to include a temperature-measuring instrument at its center of mass.

**2.2.2. Sensor Placement.** The integrated average temperature of next-to-vend beverages shall be measured in standard test packages in the next-to-vend product locations specified in Section 7.1.5.2 of ANSI/ASHRAE 32.1. Do not run the thermocouple wire and other measurement apparatus through the dispensing door; the thermocouple wire and other measurement apparatus must be configured and sealed so as to minimize air flow between the interior refrigerated volume and the ambient room air. If a manufacturer chooses to employ a method other than routing thermocouple and sensor wires through the door gasket and ensuring the gasket is compressed around the wire to ensure a good seal, then it must maintain a record of the method used in the data underlying that basic model's certification pursuant to 10 CFR 429.71.

**2.2.3. Vending Mode Test Period.** The vending mode test period begins after temperature stabilization has been achieved, as described in ANSI/ASHRAE 32.1 Section 7.2.2.2 and continues for 18 hours for equipment with an accessory low power mode or for 24 hours for equipment without an accessory low power mode. For the vending mode test period, equipment that has energy-saving features that cannot be disabled shall have those features set to the most energy-consuming settings, except for as specified in section 2.2.4 of this appendix. In addition, all energy management systems shall be disabled. Provide, if necessary, any physical stimuli or other input to the machine needed to prevent automatic activation of low power modes during the vending mode test period.

**2.2.4. Accessory Low Power Mode Test Period.** For equipment with an accessory low power mode, the accessory low power mode

may be engaged for 6 hours, beginning 18 hours after the temperature stabilization requirements established in Section 7.2.2.2 of ANSI/ASHRAE 32.1 have been achieved, and continuing until the end of the 24-hour test period. During the accessory low power mode test, operate the refrigerated bottled or canned beverage vending machine with the lowest energy-consuming lighting and control settings that constitute an accessory low power mode. The specification and tolerances for integrated average temperature in Table 2 of ANSI/ASHRAE 32.1 still apply, and any refrigeration low power mode must not be engaged. Provide, if necessary, any physical stimuli or other input to the machine needed to prevent automatic activation of refrigeration low power modes during the accessory low power mode test period.

**2.2.5. Accessories.** Unless specified otherwise in this appendix or ANSI/ASHRAE 32.1, all standard components that would be used during normal operation of the basic model in the field and are necessary to provide sufficient functionality for cooling and vending products in field installations (*i.e.*, product inventory, temperature management, product merchandising (including, *e.g.*, lighting or signage), product selection, and product transport and delivery) shall be in place during testing and shall be set to the maximum energy-consuming setting if manually adjustable. Components not necessary for the inventory, temperature management, product merchandising (*e.g.*, lighting or signage), product selection, or product transport and delivery shall be de-energized. If systems not required for the primary functionality of the machine as stated in this section cannot be de-energized without preventing the operation of the machine, then they shall be placed in the lowest energy consuming state. Components with controls that are permanently operational and cannot be adjusted by the machine operator shall be operated in their normal setting and consistent with the requirements of sections 2.2.3 and 2.2.4 of this appendix. The specific components and accessories listed in the subsequent sections shall be operated as stated during the test, except when controlled as part of a low power mode during the low power mode test period.

**2.2.5.1. Payment Mechanisms.**

(a) For purposes of demonstrating compliance with the energy conservation standards specified in § 431.296(b) for which compliance was required as of January 8, 2019, refrigerated bottled or canned beverage vending machines must be tested with no payment mechanism in place, the payment mechanism in-place but de-energized, or the payment mechanism in place but set to the lowest energy consuming state, if it cannot be de-energized. A default payment mechanism energy consumption value of 0.20 kWh/day shall be added to the primary rated energy consumption per day, as noted in section 2.3 of this appendix.

(b) Refrigerated bottled or canned beverage vending machines required to comply with any amended energy conservation standards must be tested with any coin and or bill payment mechanisms shipped with the

model in place and energized. Credit card reader payment mechanisms shall be tested with the payment mechanism in-place but de-energized, or the payment mechanism in place but set to the lowest energy consuming state, if it cannot be de-energized. For refrigerated bottled or canned beverage vending machines shipped with no payment mechanism in place, or only a credit card reader payment mechanism in place, a default payment mechanism energy consumption value of 0.20 kWh/day shall be added to the primary rated energy consumption per day, as noted in section 2.3 of this appendix.

2.2.5.2. *Internal Lighting.* All lighting that is contained within or is part of the internal physical boundary of the refrigerated bottled or canned beverage vending machine, as established by the top, bottom, and side panels of the equipment, shall be placed in its maximum energy consuming state.

2.2.5.3. *External Customer Display Signs, Lights, and Digital Screens.* All external customer display signs, lights, and digital screens that are independent from the refrigeration or vending performance of the refrigerated bottled or canned beverage vending machine must be disconnected, disabled, or otherwise de-energized for the duration of testing. Customer display signs, lighting, and digital screens that are integrated into the beverage vending machine cabinet or controls such that they cannot be de-energized without disabling the refrigeration or vending functions of the refrigerated bottled or canned beverage vending machine or modifying the circuitry must be placed in external accessory standby mode, if available, or their lowest energy-consuming state. Digital displays that also serve a vending or money processing function must be placed in the lowest energy-consuming state that still allows the money processing feature to function.

2.2.5.4. *Anti-sweat or Other Electric Resistance Heaters.* Anti-sweat or other electric resistance heaters must be operational during the entirety of the test procedure. Units with a user-selectable setting must have the heaters energized and set to the most energy-consuming position. Units featuring an automatic, non-user-adjustable controller that turns on or off based on environmental conditions must be operating in the automatic state. Units that are not shipped with a controller from the point of manufacture, but are intended to be used with a controller, must be equipped with an appropriate controller when tested.

2.2.5.5. *Condensate Pan Heaters and Pumps.* All electric resistance condensate heaters and condensate pumps must be installed and operational during the test. Prior to the start of the test, including the 24 hour period used to determine temperature stabilization prior to the start of the test period, as described in ANSI/ASHRAE 32.1 Section 7.2.2.2, the condensate pan must be dry. For the duration of the test, including the 24 hour time period necessary for temperature stabilization, allow any condensate moisture generated to accumulate in the pan. Do not manually add or remove

water from the condensate pan at any time during the test. Any automatic controls that initiate the operation of the condensate pan heater or pump based on water level or ambient conditions must be enabled and operated in the automatic setting.

2.2.5.6. *Illuminated Temperature Displays.* All illuminated temperature displays must be energized and operated during the test the same way they would be energized and operated during normal field operation, as recommended in manufacturer product literature, including manuals.

2.2.5.7. *Condenser Filters.* Remove any nonpermanent filters provided to prevent particulates from blocking a model's condenser coil.

2.2.5.8. *Security Covers.* Remove any devices used to secure the model from theft or tampering.

2.2.5.9. *General Purpose Outlets.* During the test, do not connect any external load to any general purpose outlets available on a unit.

2.2.5.10. *Crankcase Heaters and Other Electric Resistance Heaters for Cold Weather.* Crankcase heaters and other electric resistance heaters for cold weather must be operational during the test. If a control system, such as a thermostat or electronic controller, is used to modulate the operation of the heater, it must be activated during the test and operated in accordance with the manufacturer's instructions.

2.2.5.11. *Refrigerant Leak Mitigation Controls.* If the use of leak mitigation controls is a user-controlled function (e.g., if the use of the controls is optional and intended only for specific installations), the controls shall be de-energized or in their lowest energy consuming state during testing. If leak mitigation controls are not user-controlled and are always operational, the controls shall be energized and operational for testing.

2.3. *Determination of Daily Energy Consumption.* The daily energy consumption shall be equal to the primary rated energy consumption per day (ED), in kWh, determined in accordance with the calculation procedure in Section 7.2.3.1, "Calculation of Daily Energy Consumption," of ANSI/ASHRAE 32.1 plus the default payment mechanism energy consumption value from section 2.2.5.1 of this appendix, if applicable. In Section 7.2.3.1 of ANSI/ASHRAE 32.1, the energy consumed during the test shall be the energy measured during the vending mode test period and accessory low power mode test period, as specified in sections 2.2.3 and 2.2.4 of this appendix, as applicable.

2.3.1. *Refrigeration Low Power Mode.* For refrigerated bottled or canned beverage vending machines with a refrigeration low power mode, multiply the value determined in section 2.3 of this appendix by 0.97 to determine the daily energy consumption of the unit tested. For refrigerated bottled or canned beverage vending machines without a refrigeration low power mode, the value determined in section 2.3 of this appendix is the daily energy consumption of the unit tested.

2.3.1.1. *Refrigeration Low Power Mode Validation Test Method.* This test method is

not required for the certification of refrigerated bottled or canned beverage vending machines. To verify the existence of a refrigeration low power mode, initiate the refrigeration low power mode in accordance with manufacturer instructions contained in product literature and manuals, after completion of the 6-hour low power mode test period. Continue recording all the data specified in Section 7.2.2.3 of ANSI/ASHRAE 32.1 until existence of a refrigeration low power mode has been confirmed or denied. The refrigerated bottled or canned beverage vending machine shall be deemed to have a refrigeration low power mode if either:

(a) The following three requirements have been satisfied:

(1) The instantaneous average next-to-vend beverage temperature must reach at least 4 °F above the integrated average temperature or lowest application product temperature, as applicable, within 6 hours.

(2) The instantaneous average next-to-vend beverage temperature must be maintained at least 4 °F above the integrated average temperature or lowest application product temperature, as applicable, for at least 1 hour.

(3) After the instantaneous average next-to-vend beverage temperature is maintained at or above 4 °F above the integrated average temperature or lowest application product temperature, as applicable, for at least 1 hour, the refrigerated beverage vending machine must return to the specified integrated average temperature or lowest application product temperature, as applicable, automatically without direct physical intervention.

(b) Or, the compressor does not cycle on for the entire 6 hour period, in which case the instantaneous average beverage temperature does not have to reach 4 °F above the integrated average temperature or lowest application product temperature, as applicable, but, the equipment must still automatically return to the integrated average temperature or lowest application product temperature, as applicable, after the 6 hour period without direct physical intervention.

2.3.2. *Calculations and Rounding.* In all cases, the daily energy consumption must be calculated with raw measured values and the final result rounded to units of 0.01 kWh/day.

3. *Determination of Refrigeration Volume and Surface Area.*

3.1. *Refrigerated Volume.* Determine the "refrigerated volume" of refrigerated bottled or canned beverage vending machines in accordance with Section 5.3, "Refrigerated Volume," and Appendix C, "Measurement of Volume," of ANSI/ASHRAE 32.1 including the referenced methodology in Section 4, "Method for Computing Refrigerated Volume of Refrigerators and Wine Chillers," of AHAM HRF-1-2008. For combination vending machines, the "refrigerated volume" does not include any non-refrigerated compartment(s).

3.2. *Determination of Surface Area.* Note: This section is not required for the certification of refrigerated bottled or canned beverage vending machines. Determine the

surface area of each beverage vending machine as the length multiplied by the height of outermost surface of the beverage vending machine cabinet, measured from edge to edge excluding any legs or other

protrusions that extend beyond the dimensions of the primary cabinet. Determine the transparent and non-transparent areas on each side of a beverage vending machine as the total surface area of

material that is transparent or is not transparent, respectively.

[FR Doc. 2022-06139 Filed 3-30-22; 8:45 am]

**BILLING CODE 6450-01-P**



# FEDERAL REGISTER

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Part III

## The President

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Notice of March 30, 2022—Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

Notice of March 30, 2022—Continuation of the National Emergency With Respect to South Sudan



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**Presidential Documents**

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Title 3—

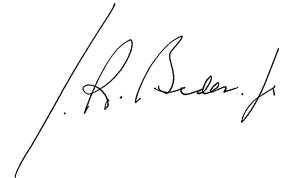
Notice of March 30, 2022

**The President****Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities**

On April 1, 2015, by Executive Order 13694, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States. On December 28, 2016, the President issued Executive Order 13757 to take additional steps to address the national emergency declared in Executive Order 13694.

These significant malicious cyber-enabled activities continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on April 1, 2015, must continue in effect beyond April 1, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13694.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
March 30, 2022.

## Presidential Documents

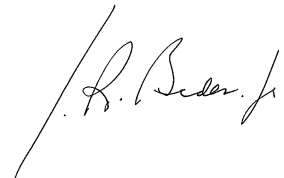
Notice of March 30, 2022

### Continuation of the National Emergency With Respect to South Sudan

On April 3, 2014, by Executive Order 13664, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations.

The situation in and in relation to South Sudan continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 3, 2014, must continue in effect beyond April 3, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13664.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
March 30, 2022.



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**H.R. 55/P.L. 117-107**  
Emmett Till Antilynching Act  
(Mar. 29, 2022; 136 Stat. 1125)  
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