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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1714

[RUS–21–ELECTRIC–0003]

RIN 0572–AC53

Streamlining Electric Program Procedures; Correction

AGENCY: Rural Utilities Service, U.S. Department of Agriculture (USDA).

ACTION: Correcting amendments.

SUMMARY: On July 9, 2021, the Rural Utilities Service (RUS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), published a final rule that revised several regulations to streamline its procedures for Electric Program borrowers, including its loan application requirements, approval of construction work plans, contract bidding procedures, contact approval procedures, system operation and maintenance reviews, long-range engineering plans and system design procedures. Following implementation of the final rule, RUS found that a correction due to a deletion is necessary. This technical correction makes an amendment to add information back to the regulation that was inadvertently deleted.

DATES: Effective July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Coates, Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Rural Utilities Service, U.S. Department of Agriculture, STOP 1569, 1400 Independence Ave. SW, Washington, DC 20250–0787, telephone: (202) 720–1900. Email: *RUSElectric@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agency is issuing a technical correction to its regulations in 7 CFR part 1714, which were amended by a final rule that published in the **Federal Register** on July 9, 2021 (86 FR 36193).

List of Subjects in 7 CFR Part 1714

Electric power, Loan programs-energy, Rural areas.

Accordingly, 7 CFR part 1714 is corrected by making the following correcting amendments:

PART 1714—PRE–LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

■ 1. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 1921 *et seq.;* and 6941 *et seq.*

■ 2. In § 1714.56, add paragraphs (b)(1) through (3) to read as follows:

§ 1714.56 Fund advance period.

* * * * *

(b) * * *

(1) To apply for an extension, the borrower must make a request to RUS prior to the last date for advance as noted in the borrower's loan documents and provide, the following:

(i) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(ii) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(iii) Notice of the estimated date for completion of construction.

(2) If the Administrator approves a request for an extension, RUS will notify the borrower in writing of the extension and the terms and conditions thereof. An extension will be effective only if it is requested in writing prior to the last date for advance as provided in the borrower's loan documents.

(3) Any request received after the last date for advance shall be rejected.

* * * * *

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–14127 Filed 6–30–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0803; Project Identifier AD–2022–00732–E; Amendment 39–22107; AD 2022–14–02]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A (LEAP–1A) model turbofan engines. This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks) and a stages 6–10 compressor rotor spool were manufactured from material suspected to contain iron inclusion. This AD requires the replacement of certain HPT stage 1 disks and a stages 6–10 compressor rotor spool. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 18, 2022.

The FAA must receive comments on this AD by August 15, 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 final rule, contact CFM

International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. 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–2022–0803; 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 street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in three non-LEAP–1A HPT rotor disks. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain CFM International, S.A. LEAP–1A HPT stage 1 disks and a stages 6–10 compressor rotor spool manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information

The FAA reviewed CFM International, S.A. Service Bulletin LEAP–1A–72–00–0474–01A–930A–D, Issue 001–00, dated June 10, 2022. The service information describes procedures for removing and replacing the HPT stage 1 disk and stages 6–10 compressor rotor spool.

AD Requirements

This AD requires the replacement of certain HPT stage 1 disks and a stages 6–10 compressor rotor spool.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the presence of iron inclusion in the HPT stage 1 disks and stages 6–10 compressor rotor spool could lead to premature fracture and uncontained failure, which indicates an immediate safety of flight problem. The manufacturer identified 12 parts manufactured from material suspected to have iron inclusion and calculated reduced life limits for these parts. These parts are predicted to exceed the reduced life limits prior to October 2022 and will thus require replacement within the next 90 days. The longer these parts remain in service, past their calculated life, the higher the probability of failure. Therefore, the compliance time for the required actions is shorter than the time necessary to allow public comment and the FAA to publish a final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''FAA–2022–0803 and Project Identifier AD–2022–00732–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, and 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 1 engine installed on airplanes of U.S. registry. The FAA estimates that zero engines installed on airplanes of U.S. registry require replacement of the stages 6–10 compressor rotor spool.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 1 disk	8 work-hours × $85 per hour = $680	$353,500	$354,180	$354,180
Replace stages 6-10 compressor rotor spool	8 work-hours × $85 per hour = $680	376,600	377,280	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–14–02 CFM International, S.A.: Amendment 39–22107; Docket No. FAA–2022–0803; Project Identifier AD–2022–00732–E.

(a) Effective Date

This airworthiness directive (AD) is effective July 18, 2022

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A model turbofan engines with an installed:

(1) High-pressure turbine (HPT) rotor stage 1 disk (HPT stage 1 disk) with part number (P/N) and serial number (S/N) identified in Table 1 to paragraph (g)(1) of this AD; or,

(2) Stages 6–10 compressor rotor spool with P/N 2468M20G03 and S/N GWN1141P.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain HPT stage 1 disks and a stages 6–10 compressor rotor spool were manufactured from material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and potential uncontained failure of certain HPT stage 1 disks and a stages 6–10 compressor rotor spool. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit or before exceeding the cycles since new (CSN) threshold in Table 1 to paragraph (g)(1), whichever occurs first after the effective date of this AD, or if the CSN threshold in Table 1 to paragraph (g)(1) has been exceeded as of this AD's effective date, within 50 flight cycles (FCs) from the effective date of this AD, remove the HPT stage 1 disk with P/N and S/N identified in Table 1 to paragraph (g)(1) of this AD from service and replace with an HPT stage 1 disk eligible for installation.

Table 1 to Paragraph (g)(1) – HPT Stage 1 Disk

Part Name	P/N	Part S/N	CSN Threshold
HPT Stage 1 Disk	2466M62G03	FGB0GLNA	6,097
HPT Stage 1 Disk	2466M62G03	FGB0GRE4	2,575
HPT Stage 1 Disk	2466M62G03	FGB0GWR5	2,892
HPT Stage 1 Disk	2466M62G03	FGB0G019	5,420
HPT Stage 1 Disk	2466M62G03	FGB0G0G9	5,140
HPT Stage 1 Disk	2466M62G03	FGB0G3E1	5,070
HPT Stage 1 Disk	2466M62G03	FGB0G320	5,500
HPT Stage 1 Disk	2466M62G03	FGB0G5L2	2,516
HPT Stage 1 Disk	2466M62G03	FGB0G440	2,076
HPT Stage 1 Disk	2466M62G03	FGB0G7K0	2,690
HPT Stage 1 Disk	2784M32G01	FGB0J76F	2,760

(2) At the next engine shop visit or before exceeding 7,290 CSN, whichever occurs first after the effective date of this AD, or if 7,290 CSN has been exceeded as of this AD's effective date, within 50 FCs from the effective date of this AD, remove the stages 6–10 compressor rotor spool with P/N 2468M20G03 and S/N GWN1141P from service and replace with a stages 6–10 compressor rotor spool eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''HPT stage 1 disk eligible for installation'' is any HPT stage 1 disk that does not have a P/N and S/N identified in Table 1 to paragraph (g)(1) of this AD.

(2) For the purpose of this AD, a ''stages 6–10 compressor rotor spool eligible for installation'' is any stages 6–10 compressor rotor spool that does not have P/N 2468M20G03 and S/N GWN1141P.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 (j) of this AD and email to: *ANE-AD-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.

(j) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on June 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–14212 Filed 6–29–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0817; Airspace Docket No. 20–AAL–45]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–308; Anvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–308 in the vicinity of Anvik, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0817 in the **Federal Register** (86 FR 58611; October 22, 2021), establishing United States Area Navigation (RNAV) route T–308 in the vicinity of Anvik, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There were no comments received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11F.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–308 in the vicinity of Anvik, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

The proposed route is described below.

T–308: This action establishes T–308 to extend between the Emmonak, AK, (ENM) VHF Omni-Directional Range (VOR) and the WEREL, AK, waypoint (WP) which is a new WP replacing the Anvik, AK, (ANV) Non-Directional Beacon (NDB). The T–308 route mirrors the current VOR Federal airway V–510, and serves as an acceptable alternative.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA determined that this airspace action of establishing RNAV route T–308 in the vicinity of Anvik, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and

effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–308 Emmonak, AK (ENM) to WEREL, AK [New]

Emmonak, AK (ENM)	VOR/DME	(Lat. 62°47′04.52″ N, long. 164°29′15.12″ W)
WEREL, AK	WP	(Lat. 62°38′29.25″ N, long. 160°11′07.20″ W)

* * * * *

Issued in Washington, DC, on June 27, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–14085 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0623; Airspace Docket No. 22–AGL–13]

RIN 2120–AA66

Amendment of Area Navigation (RNAV) Route Q–440; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of area navigation (RNAV) route Q–440 by changing one route point reflected as a fix to a waypoint (WP) and removing one route point that is not required for defining the route structure. This action does not change the Q–440 structure, charted alignment, or the operating requirements of the route.

DATES: Effective date 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

RNAV route Q–440 extends through the Great Lakes region into New England between the HUFFR, MN, WP and the RAAKK, NY, WP. After reviewing Q–440 in preparation of upcoming planned navigational aid decommissioning actions, the FAA determined one route point listed in the route description could be removed without affecting the route's structure or charted alignment. The SLLAP, MI, WP in the Q–440 description does not denote a route turn point, have established holding requirements, and does not result in PBN leg length maximum allowable distances being exceeded; therefore, it is not required in the description.

Further, the FAA is changing the DEANI, MI, fix to become a WP in the aeronautical database. As such, the DEANI, MI, fix will be amended in the Q–440 description to reflect the route point as a WP.

Once this action is completed, the SLLAP, MI, WP will continue to be depicted on the IFR En Route High Altitude charts and support air traffic control requirements.

United States Area Navigation Routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Q–440 route listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Q–440 in Michigan. Q–440 extends between the HUFFR, MN, WP and the RAAKK, NY, WP. The DEANI, MI, fix will be changed to reflect the route point as the DEANI, MI, WP in the route description. The SLLAP, MI, WP route point is removed from the description of Q–440 between the DEANI, MI, WP and the BERYS, MI, WP. The SLLAP WP is on a straight segment of the route and not required to retain the route's structure. The charted depiction of Q–440 is unchanged and the full route description is listed in The Amendment section, below.

This is an administrative change and does not affect the Q–440 route structure, charted alignment, or the operating requirements of the route. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending the legal description of RNAV route Q–440, by changing one route point from a fix to a WP and removing an unnecessary route point from the route description, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500. This is also in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–440 HUFFR, MN to RAAKK, NY [Amended]

HUFFR, MN	WP	(Lat. 45°08′48.63″ N, long. 093°29′29.66″ W)
IDIOM, WI	WP	(Lat. 44°30′18.00″ N, long. 088°17′57.00″ W)
DEANI, MI	WP	(Lat. 43°43′07.35″ N, long. 085°46′29.20″ W)
BERYS, MI	WP	(Lat. 42°54′33.97″ N, long. 083°17′59.75″ W)
TWIGS, MI	WP	(Lat. 42°48′34.10″ N, long. 082°33′10.30″ W)
JAAJA, Canada	WP	(Lat. 42°40′00.00″ N, long. 081°16′00.00″ W)
ICHOL, Canada	WP	(Lat. 42°38′31.46″ N, long. 080°30′13.99″ W)
FARGN, Canada	WP	(Lat. 42°36′42.19″ N, long. 079°47′18.42″ W)
RAAKK, NY	WP	(Lat. 42°23′59.00″ N, long. 078°54′39.00″ W)

Excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on June 27, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–14117 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0853; Airspace Docket No. 19–AAL–44]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–375; Bettles, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–375 in the vicinity of Bettles, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0853 in the **Federal Register** (86 FR 58613; October 22, 2021), establishing United States Area Navigation (RNAV) route T–375 in the vicinity of Bettles, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There were no comments received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11F.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–375 in the vicinity of Bettles, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

The route is described below.

T–375: This action establishes RNAV route T–375 extending between the Bettles, AK, (BTT) VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aide and the DERIK, AK, waypoint (WP), located northeast of Anaktuvuk Pass, AK.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA determined that this airspace action of establishing RNAV route T–375 in the vicinity of Bettles, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–375 BETTLES, AK (BTT) TO DERIK, AK [NEW]

Bettles, AK (BTT)	VOR/DME	(Lat. 66°54′18.03″ N, long. 151°32′09.18″ W)
FEDEN, AK	WP	(Lat. 67°02′55.69″ N, long. 151°49′50.84″ W)
HEKDU, AK	WP	(Lat. 67°17′29.94″ N, long. 151°55′19.72″ W)
TOUTS, AK	WP	(Lat. 67°25′09.10″ N, long. 152°00′27.45″ W)
ZEBUR, AK	WP	(Lat. 67°32′54.42″ N, long. 152°06′57.25″ W)
RUTTY, AK	WP	(Lat. 67°48′23.58″ N, long. 152°23′44.42″ W)
FERKA, AK	WP	(Lat. 68°04′21.87″ N, long. 152°10′10.28″ W)
ZENSA, AK	WP	(Lat. 68°08′59.01″ N, long. 151°48′59.16″ W)
HAKSA, AK	WP	(Lat. 68°21′02.57″ N, long. 151°28′53.81″ W)
DERIK, AK	WP	(Lat. 68°57′06.14″ N, long. 149°43′17.31″ W)

* * * * *

Issued in Washington, DC, on June 22, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–13877 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

29 CFR Part 21

Protection of Human Subjects

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 29 of the Code of Federal Regulations, Parts 0 to 99, revised as of July 1, 2021, in § 21.101, remove the heading from paragraph (l) and add a heading to paragraph (l)(1) to read as follows:

§ 21.101 To what does this policy apply?

* * * * *

(l) * * *

(1) *Pre-2018 Requirements.* * * *

* * * * *

[FR Doc. 2022–14237 Filed 6–30–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 254

Oil-Spill Response Requirements for Facilities Located Seward of the Coast Line

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 30 of the Code of Federal Regulations, Parts 200 to 699, revised as of July 1, 2021, amend § 254.54, by removing ''Regional Supervisor'' in the first sentence, and adding in its place ''Chief, OSPD,''.

[FR Doc. 2022–14246 Filed 6–30–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Global Terrorism Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adopting a final rule amending the Global Terrorism Sanctions Regulations to implement a September 9, 2019 counter-terrorism Executive order.

DATES: This rule is effective July 1, 2022.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On June 6, 2003, OFAC issued the Global Terrorism Sanctions Regulations, 31 CFR part 594 (68 FR 34196, June 6, 2003) (''the Regulations''), to implement Executive Order (E.O.) 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'' (66 FR 49079, September 25, 2001). OFAC has amended the Regulations on several occasions.

On September 9, 2019, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA) and the United Nations Participation Act (22 U.S.C. 287c) (UNPA), issued E.O. 13886, ''Modernizing Sanctions To Combat Terrorism'' (84 FR 48041, September 12, 2019), effective September 10, 2019. In E.O. 13886, the President, finding it necessary to consolidate and enhance sanctions to combat acts of terrorism and threats of terrorism by foreign terrorists, terminated the national emergency declared in E.O. 12947 of January 23, 1995, ''Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process'' (60 FR 5079, January 25, 1995), and revoked E.O. 12947, as amended by E.O. 13099 of August 20, 1998, ''Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process'' (63 FR 45167, August 25, 1998). In addition, the President amended E.O. 13224, in order to build upon initial steps taken in E.O. 12947, to further strengthen and consolidate sanctions to combat the continuing threat posed by international terrorism, and in order to take additional steps to deal with the national emergency declared in E.O. 13224, with respect to the continuing and immediate threat of grave acts of terrorism and threats of terrorism committed by foreign terrorists, which include acts of terrorism that threaten the Middle East peace process.

Section 1 of E.O. 13886 replaces in its entirety section 1 of E.O. 13224, which had been amended by a number of prior Executive orders (E.O. 13224, as amended by all such authorities, is referred to herein as ''amended E.O. 13224''), but does not amend the Annex to E.O. 13224, which was previously amended by E.O. 13268 of July 2, 2002, ''Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001'' (67 FR 44751, July 3, 2002) (''amended Annex to E.O. 13224''). New section 1(a) of amended E.O. 13224 blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of: (i) the persons listed in the amended Annex to E.O. 13224; (ii) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security: (A) to have committed or have attempted to commit, to pose a significant risk of committing, or to have participated in training to commit acts of terrorism that threaten the security of United States nationals or the national security, foreign policy, or economy of the United States; or (B) to be leader of an entity: (1) listed in the amended Annex to E.O. 13224; or (2) whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to amended E.O. 13224; (iii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General: (A) to be owned, controlled, or directed by, or to have acted or purported to act for or on behalf

of, directly or indirectly, or any person whose property and interests in property are blocked pursuant to amended E.O. 13224; (B) to own or control, directly or indirectly, any person whose property and interests in property are blocked pursuant to amended E.O. 13224; (C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an act of terrorism as defined in section 3(d) of amended E.O. 13224, or any person whose property and interests in property are blocked pursuant to amended E.O. 13224; (D) to have participated in training related to terrorism provided by any person whose property and interests in property are blocked pursuant to amended E.O. 13224; (E) to be a leader or official of an entity whose property and interests in property are blocked pursuant to: (1) a determination by the Secretary of the Treasury pursuant to amended E.O. 13224; or (2) section (a)(iv) of section 1 of amended E.O. 13224; or (F) to have attempted or conspired to engage in any of the activities described in sections (a)(iii)(A) through (E) of section 1 of amended E.O. 13224; and (iv) persons whose property and interests in property were blocked pursuant to E.O. 12947, as amended, on or after January 23, 1995 and remained blocked immediately prior to September 24, 2001 (the effective date of amended E.O. 13224). The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

New section 1(b) of amended E.O. 13224 authorizes the Secretary of the Treasury to prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States, of a correspondent account or payable-through account of any foreign financial institution that the Secretary of the Treasury, in consultation with the Secretary of State, has determined, on or after September 24, 2001 (the effective date of amended E.O. 13224), has knowingly conducted or facilitated any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to amended E.O. 13224.

Section 2 of E.O. 13886 amends section 5 of E.O. 13224 by replacing the reference to section 1(d) with a reference to section 1(a)(iii) to make a conforming change to reference the similar, but expanded, designation criteria in new section 1(a)(iii) of amended E.O. 13224.

Regulatory Amendments

OFAC is amending the Regulations to implement the provisions of E.O. 13886 that amend sections 1(a) and 5 of E.O. 13224, as well as to make other technical and conforming changes for this amendment. Specifically, OFAC is amending the Regulations as follows: (i) amending the authority citation to incorporate E.O. 13886 as a new authority and the Hizballah International Financing Prevention Act of 2015 (Pub. L. 114–102, 129 Stat. 2205, 50 U.S.C. 1701 note), as amended; (ii) amending § 594.201 to reflect the new designation criteria contained in section 1(a) of amended E.O. 13224; (iii) updating the definition of the term *effective date* in § 594.302 to account for revisions to § 594.201; (iv) adjusting or removing cross-references in § 594.301 and elsewhere in the Regulations to certain subparagraphs of revised § 594.201; and (v) updating § 594.802 to add certain presidential delegations. OFAC anticipates implementing section 1(b) of amended E.O. 13224 at a later date.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 15015–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 594

Administrative practice and procedure, Banks, banking, Blocking of assets, Credit, Exports, Foreign Trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Security, Services, Terrorism.

For the reasons set forth in the preamble, OFAC amends 31 CFR part 594 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205, as amended (50 U.S.C. 1701 note); Pub. L. 115–44, 131 Stat 886 (codified in scattered sections of 22 U.S.C.); Pub. L. 115–348, 132 Stat. 5055 (50 U.S.C. 1701 note); E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159; E.O. 13886, 84 FR 48041, 3 CFR, 2019 Comp., p. 356.

Subpart B—Prohibitions

§ 594.201 [Amended]

■ 2. Amend § 594.201 by:
■ a. Revise paragraphs (a)(1), (2), (3), and (4);
■ b. In Note 1 to paragraph (a):
■ i. Remove the reference ''paragraph (a)(4)'' and add in its place ''paragraph (a)(3)'';
■ ii. Remove ''his'' and add in its place ''their'';
■ iii. Remove ''he'' and add in its place ''the Secretary of the Treasury'';
■ iv. Add '','' after ''Secretary of Homeland Security'' wherever it appears.

The revisions read as follows:

§ 594.201 Prohibited transactions involving blocked property.

(a) * * *

(1) Persons listed in the Annex to Executive Order (E.O.) 13224 of September 23, 2001, as amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security:

(i) To have committed or have attempted to commit, to pose a significant risk of committing, or to have participated in training to commit acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; or

(ii) To be a leader of an entity:

(A) Described in paragraph (a)(1) of this section; or

(B) Whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224, as amended;

(3) Persons determined by the Secretary of the Treasury, in

consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General:

(i) To be owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraphs (a)(1) through (a)(4) of this section;

(ii) To own or control, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraphs (a)(1) through (a)(4) of this section;

(iii) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an act of terrorism as defined in § 594.311, or any person whose property and interest in property are blocked pursuant to paragraphs (a)(1) through (a)(4) of this section;

(iv) To have participated in training related to terrorism provided by any person whose property and interests in property are blocked pursuant to paragraphs (a)(1) through (a)(4) of this section;

(v) To be a leader or official of an entity whose property and interests in property are blocked pursuant to:

(A) A determination by the Secretary of the Treasury pursuant to paragraph (a)(3) of this section; or

(B) Paragraph (a)(4) of this section; or

(vi) To have attempted or conspired to engage in any of the activities described in paragraphs (a)(3)(i) through (a)(3)(v) of this section;

(4) Persons whose property and interests in property were blocked pursuant to E.O. 12947, as amended, on or after January 23, 1995, and remained blocked immediately prior to 12:01 a.m. eastern daylight time on September 24, 2001;

* * * * *

Subpart C—Definitions

■ 3. Revise § 594.302 to read as follows:

§ 594.302 Effective Date

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a)(1) With respect to a person whose property and interests in property are blocked pursuant to § 594.201(a)(1) and who appeared on the Annex to E.O. 13224 as issued on September 23, 2001, 12:01 a.m. eastern daylight time, September 24, 2001;

(2) With respect to a person whose property and interests in property are blocked pursuant to § 594.201(a)(1) and who was added to the Annex to E.O. 13224 after September 23, 2001, the date the person was added to the Annex to E.O. 13224, as amended;

(b) With respect to a person whose property or interests in property are blocked pursuant to § 594.201(a)(2) through (a)(11), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked pursuant to one or more of these sections.

(c) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 594.316 [Removed and Reserved]

■ 4. Remove and reserve § 594.316.

§ 594.317 [Amended]

■ 5. Amend § 594.317 by removing ''§ 594.201(a)(4)(i) of''.

§ 594.802 [Amended]

■ 6. In § 594.802, add '' Presidential Memorandum of January 15, 2019: Delegation of Functions and Authorities Under the Hizballah International Financing Prevention Act of 2015, as Amended, and the Hizballah International Financing Prevention Amendments Act of 2018, and Presidential Memorandum of May 24, 2019: Delegation of Functions and Authorities Under the Sanctioning the Use of Civilians as Defenseless Shields Act,'' after ''(Pub. L. 115–44),''.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Brian E. Nelson,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2022–13969 Filed 6–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 842

Administrative Claims

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 32 of the Code of Federal Regulations, Parts 800 to End, revised as of July 1, 2021, in § 842.55, reinstate paragraph (r) to read as follows:

§ 842.55 Claims not payable

* * * * *

(r) Is one for which a foreign government is responsible under SOFA, treaty, or other agreement. However, AFLOA/JACC may authorize payment of a claim where the foreign government refuses to recognize its legal responsibilities and the claimant has no other means of compensation.

* * * * *

[FR Doc. 2022–14301 Filed 6–30–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0372]

RIN 1625–AA00

Safety Zone; Parade, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Willamette River. This action is necessary to provide for the safety of participants and the maritime public during a float parade on the Willamette River in Portland, Oregon on July 10, 2022. This regulation prohibits non-participant persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

DATES: This rule is effective from 10:30 a.m. to 6:30 p.m. on July 10, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0372 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port Columbia River
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

On April 22, 2022, the Human Access Project notified the Coast Guard that it will need to reschedule The Big Float, an annually recurring marine event. The event consists of a float parade from 11 a.m. to 6 p.m. on July 10, 2022. In response, on June 2, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Parade, Willamete River, Portland, OR (87 FR 33695). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended July 21, 2022, we received no comments.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Columbia River (COTP) has determined that the potential hazards associated with the float parade would be a safety concern for anyone within the designated area of the safety zone before, during, or after the parade. The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

As noted above, we received no comments on our NPRM published June 2, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 10:30 a.m. to 6:30 p.m. on July 10, 2021. The safety zone will cover all navigable waters of the Willamette River, in Portland Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11 a.m. to 6 p.m. parade. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The safety zone created by this rule is designed to minimize its impact on navigable waters. This rule prohibits entry into certain navigable waters of the Willamette River and is not anticipated to exceed 7 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 7 hours that will prohibit entry within a 1 mile length of the Willamette River for the duration of the float event. 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 record keeping 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.T13–0372 to read as follows:

§ 165.T13–0372 Safety Zone; Parade, Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: all navigable waters of the Willamette River, in Portland Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W.

(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 parade.

(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 regulated area must comply with all lawful orders or directions given to them by the COTP or the 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 period.* This section will be enforced from 10:30 a.m. until 6:30 p.m. on July 10, 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: June 24, 2022.

M. Scott Jackson,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2022–14059 Filed 6–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0064]

RIN 1625–AA00

Safety Zone; Blue Angels at Kaneohe Bay Air Show; Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone while the U.S. Navy Blue Angels Squadron conducts aerobatic performances over Kaneohe Bay, Oahu, Hawaii from 9 a.m. through 5 p.m., August 12–14, 2022. This safety zone will encompass a small area of the Kaneohe Bay Naval Defensive Sea Area, including an area that extends approximately 200 yards northeast and 1,000 yards southwest of the Naval Defensive Sea Area and is bound by the following points: 21°26.159′ N, 157°47.312′ W; then south to 21°25.890′ N, 157°47.250′ W; then northeast to 21°27.943′ N, 157°44.953′ W; then west to 21°28.016′ N, 157°45.250′ W; and returning southwest to the starting point. This safety zone will extend from the surface of the water to the ocean floor. This safety zone is necessary to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aircraft low flying, high powered jet aerobatics over open waters. Vessels desiring to transit through the zone can request permission by contacting the Honolulu Captain of the Port (COTP) or her designated representative.

DATES: This rule is effective from 9 a.m. through 5 p.m., August 12–14, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0064 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Bradley

Lindsey, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541–4363, email *Bradley.w.lindsey@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

On January 27, 2022, Kaneohe Bay Air Show 2022 coordinators informed the U.S. Coast Guard of a State of Hawaii approved Air Show plan that include an aerial performance ''show box'' extending beyond the Kaneohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941. Within this ''show box'', the U.S. Navy Blue Angels Squadron will conduct aerobatic performances, exhibiting their aircraft's maximum performance capabilities, over Kaneohe Bay, Oahu, Hawaii during a 3-day period. Taking into account the hazards associated within this ''show box'' during the Squadron's high powered multiple jet aircraft performances, and that Kaneohe Bay normally experiences heavy waterway traffic during the weekends, the COTP determined that a safety zone for the portions of the ''show box'' that extend beyond the Kaneohe Bay Naval Defensive Sea would be appropriate to ensure the safety of all watercraft and the general public during the Blue Angels' performances. In response, on March 28, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Blue Angels at Kaneohe Bay Air Show; Oahu, HI (87 FR 17246). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this air show. During the comment period that ended April 27, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the air show scheduled to take place August 12–14, 2022 will be a safety concern for anyone within the ''show box.'' The purpose of this rule is to ensure safety of vessels and the general public in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 28, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone while the U.S. Navy Blue Angels Squadron conducts aerobatic performances over Kaneohe Bay, Oahu, Hawaii from 9 a.m. through 5 p.m., August 12–14, 2022. This safety zone will encompass a small area of the Kaneohe Bay Naval Defensive Sea Area, including an area that extends approximately 200 yards northeast and 1,000 yards southwest of the Naval Defensive Sea Area and is bound by the following points: 21°26.159′ N, 157°47.312′ W; then south to 21°25.890′ N, 157°47.250′ W; then northeast to 21°27.943′ N, 157°44.953′ W; then west to 21°28.016′ N, 157°45.250′ W; and returning southwest to the starting point. This safety zone will extend from the surface of the water to the ocean floor. These safety zones are necessary to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aircraft low flying, high powered jet aerobatics over open waters. Vessels requiring emergency transit through the zone may request permission by contacting the on scene Patrol Commander on VHF channel 16 (156.800 MHz) or the Honolulu Captain of the Port at telephone number 808–842–2600.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

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

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that extends the Kaneohe Bay Naval Defense Sea Area on both sides that would prevent vessels from entering the flight paths for the air show. 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.T14–0064 to read as follows:

§ 165.T14–0064 Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, Hawaii.

(a) *Location.* The following area is a safety zone: All waters contained within an area composing of one box on Kaneohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941, in Kaneohe Bay, Oahu, Hawaii. This safety zone extends approximately 200 yards northeast and 1,000 yards southwest of the Naval Defensive Sea Area and is bound by the following points: 21°26.159′ N, 157°47.312′ W; then south to 21°25.890′ N, 157°47.250′ W; then northeast to 21°27.943′ N, 157°44.953′ W; then west to 21°28.016′ N, 157°45.250′ W; and returning southwest to the starting point. This safety zone extends from the surface of the water to the ocean floor. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19359 (NAD 83).

(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 Honolulu (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF channel 16 (156.800 MHz) or the Honolulu Captain of the Port at telephone number 808–842–2600. 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 rule will be enforced daily between the hours of 9 a.m. through 5 p.m., August 12–14, 2022.

A.L. Kirksey,

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

[FR Doc. 2022–14063 Filed 6–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0504]

RIN 1625–AA00

Safety 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 safety zone for the navigable waters in the vicinity of Naval Base Coronado in San Diego Bay, San Diego, CA, in support of a U.S. Navy construction project. The safety zone is needed to protect non-involved personnel from potential hazards associated with the project. Entry of swimmers or divers into this zone will be prohibited unless specifically authorized by the Captain of the Port San Diego.

DATES: This rule is effective from 7:30 a.m. on June 30 until 3:30 p.m. on July 7, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0504 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Commander Ronald Caputo, Chief, Prevention Department, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *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 we must establish this safety zone by June 30, 2022. This urgent safety zone is required to protect the maritime public and the surrounding waterways from hazards associated with a U.S. Navy construction project. The Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of San Diego Bay during construction activities scheduled to begin on June 30, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Diego (COTP) has determined that the potential hazards associated with the U.S. Navy construction activities scheduled to begin on June 30, 2022 poses a potential safety concern in the regulated area. This rule is needed to protect non-involved personnel in the navigable waters of San Diego Bay during the exercise.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 a.m. through 3:30 p.m. daily on June 30, July 1, 5, 6, and 7, 2022. The safety zone will cover all navigable waters of San Diego Bay within a 1,900-foot radius centered at Pier 14 at the Naval Amphibious Base on Naval Base Coronado. The purpose of the safety zone is to protect non-involved personnel in the navigable waters of San Diego Bay during the construction project. No swimming or diving will be permitted within the safety zone without obtaining permission from the COTP or his designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone, and will only prohibit swimming and diving within the safety zone. Vessel traffic will be able to transit through this safety zone, which will impact a small designated area of the San Diego Bay. The Coast Guard will issue a Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

While some swimmers or divers intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any swimmer or diver.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within a 1,900-foot radius of a designated coordinate in the vicinity of Naval Base Coronado in 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.T11–101 to read as follows:

§ 165.T11–101 Safety Zone; San Diego Bay; San Diego, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of San Diego Bay, from surface to bottom, within a 1,900-foot radius around Pier 14, Naval Amphibious Base, centered at position: 32°40′44.6″ N 117°09′36.2″ W.

(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 San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Swimming or diving is prohibited in the safety zone described in paragraph (a) of this section during the enforcement periods 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 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*s. This section will be enforced from 7:30 a.m. through 3:30 p.m. daily on June 30, July 1, 5, 6, and 7, 2022.

Dated: June 21, 2022.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2022–14143 Filed 6–29–22; 11:15 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0682; FRL–9932–01–OCSPP]

Sodium Dioctyl Sulfosuccinate (CAS Reg. No. 577–11–7); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium dioctyl sulfosuccinate (CAS Reg. No. 577–11–7) when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a). Spring Regulatory Sciences, on behalf of Evonik Corporation, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium dioctyl sulfosuccinate (CAS Reg. No. 577–11–7) when used in accordance with this exemption.

DATES: This regulation is effective July 1, 2022. Objections and requests for hearings must be received on or before August 30, 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–2021–0682, 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. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following

list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title40.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0682 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 August 30, 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–2021–0682, 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/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of October 21, 2021 (86 FR 58239) (FRL–8792–04–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11566) by Spring Regulatory Sciences (6620 Cypresswood Dr, Suite 250, Spring, TX 77379), on behalf of Evonik Corporation, (P.O. Box 34628, Richmond, VA 23234). The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of sodium dioctyl sulfosuccinate (CAS Reg. No. 577–11–7) for use as an inert ingredient in antimicrobial pesticide formulations. That document referenced a summary of the petition prepared by the petitioner, which is available in the docket, and solicited comments on the petitioner's request at *http://regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. 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.''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to sodium dioctyl sulfosuccinate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with sodium dioctyl sulfosuccinate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Sodium dioctyl sulfosuccinate is also known as dioctyl sodium sulfosuccinate or DSS. Specific information on the studies received and the nature of the adverse effects caused by sodium dioctyl sulfosuccinate, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies, are discussed in the November 5, 2012 document titled ''Dioctyl Sodium Sulfosuccinate: Preliminary Human Health Risk Assessment in Support of Registration Review,'' which is available at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2010–1006, and in the June 10th, 2022 document titled ''IN–11566; Petition to an amend Tolerance Exemption for Sodium dioctyl sulfosuccinate (CAS No. 577–11–7), adding it to the approved list of food use inert ingredients under 40 CFR 180.940(a) in Pesticide Formulations.'' which is available at *https://www.regulations.gov* in the docket for this action.

Sodium dioctyl sulfosuccinate has low acute oral, dermal and inhalation toxicity. It is neither a skin sensitizer nor a skin or eye irritant. Toxicity to offspring occurred in the reproduction and developmental studies only at the limit dose and in the presence of parental toxicity. The subchronic toxicity, chronic toxicity, and mutagenicity studies did not demonstrate any significant toxicity of sodium dioctyl sulfosuccinate.

In a 90-day oral toxicity study in Sprague-Dawley rats with sodium dioctyl sulfosuccinate, no adverse effects were observed up to the highest dose tested and the NOAEL is 1000 mg/kg/day.

B. Toxicological Points of Departure/Levels of Concern

The toxicological points of departure/levels of concern of sodium dioctyl sulfosuccinate remain unchanged from the Toxicological Profile in Preliminary Human Health Risk Assessment in Support of Registration Review. D405928, November 5, 2012. No toxicological endpoints of concern were identified for sodium dioctyl sulfosuccinate because there was no offspring susceptibility and the only effects observed occurred at the limit dose.

C. Exposure Assessment

Dietary and residential (non-occupational and non-dietary) exposures are expected from the proposed and existing uses of sodium dioctyl sulfosuccinate. However, no quantitative dietary or residential exposure assessments were conducted because no toxicological endpoints of concern were identified.

D. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not determined that sodium dioctyl sulfosuccinate share a common mechanism of toxicity with any other substances, and sodium dioctyl sulfosuccinate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has assumed that sodium dioctyl sulfosuccinate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticides/cumulative*.

E. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold 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 unless EPA concludes that a different margin of safety will be safe for infants and children. Based on an assessment of sodium dioctyl sulfosuccinate, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children, and a qualitative assessment is being conducted for sodium dioctyl sulfosuccinate. The qualitative assessment does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

F. Determination of Safety

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sodium dioctyl sulfosuccinate residues. More detailed information about the Agency's analysis can be found at *https://www.regulations.gov* in the November 5, 2012 document titled ''Dioctyl Sodium Sulfosuccinate: Preliminary Human Health Risk Assessment in Support of Registration Review'' in docket ID number EPA–HQ–OPP–2010–1006, and in the June 10th, 2022 document titled ''IN–11566; Petition to an amend Tolerance Exemption for Sodium dioctyl sulfosuccinate (CAS No. 577–11–7), adding it to the approved list of food use inert ingredients under 40 CFR 180.940(a) in Pesticide Formulations.'' in the docket for this action.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of sodium dioctyl sulfosuccinate in or on any food commodities.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for sodium dioctyl sulfosuccinate when used as an inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997).

This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 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. In § 180.940, amend Table 1 to Paragraph (a) by adding, in alphabetical order, an entry for ''Sodium dioctyl sulfosuccinate'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * * * *	*	*
Sodium dioctyl sulfosuccinate	577–11–7	None.
* * * * *	*	*

* * * * *

[FR Doc. 2022–14067 Filed 6–30–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0103; FXES111302WOLF0–FF02ENEH00]

RIN 1018–BE52

Endangered and Threatened Wildlife and Plants; Revision to the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), revise the regulations for the nonessential experimental population of the Mexican wolf (*Canis lupus baileyi*) in the Mexican Wolf Experimental Population Area under section 10(j) of the Endangered Species Act of 1973, as amended (ESA). The regulatory revisions in this rule include a revised population objective, a new genetic objective, and the temporary restriction of three take provisions. This rule also includes an essentiality determination under section 10(j) of the ESA. The experimental population, inclusive of these revisions, will contribute to the long-term conservation and recovery of the Mexican wolf by alleviating demographic and genetic threats in this population consistent with our rangewide recovery strategy and goals for the Mexican wolf.

DATES: This rule is effective August 1, 2022.

ADDRESSES: This final rule, along with the October 29, 2021, proposed rule, public comments on the proposed rule, a final supplemental environmental impact statement, and record of decision, are available on the internet at *https://www.regulations.gov* in Docket No. FWS–R2–ES–2021–0103 or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Brady McGee, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd. NE, Albuquerque, NM 87113; telephone 505–761–4748. 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 visit the Mexican Wolf Recovery Program's website at *https://www.fws.gov/program/mexican-wolf* for information about the experimental population designation for the Mexican wolf.

SUPPLEMENTARY INFORMATION:

Background

The Mexican wolf (*Canis lupus baileyi*) is a subspecies of gray wolf that historically occurred in portions of the southwestern United States and central and northern Mexico. Today, Mexican wolves occupy the Mexican Wolf Experimental Population Area in central and southern Arizona and New Mexico in the United States, and portions of the states of Sonora and Chihuahua in Mexico. Mexican wolves predominantly prey on elk in the United States, but other sources of prey throughout their current range include deer, small mammals, and birds. Mexican wolves are also known to scavenge on livestock (USFWS 2017b, pp. 12–19). Similar to other gray wolves, Mexican wolves are social predators that live and hunt in packs with an established territory. Mexican wolf territories are dozens to several hundred square miles in size, and Mexican wolves may disperse long distances to establish a new territory (86 FR 59953, October 29, 2021, p. 86 FR 59959). Mexican wolves face threats across their range from demographic stochasticity (fluctuations in survival and reproduction associated with small population size); genetic issues including inbreeding, loss of heterozygosity, and loss of adaptive potential; and excessive human-caused mortality, including illegal killing (80 FR 2488, January 16, 2015; see also USFWS 2017a, pp. 23–34, and USFWS 2017b, p. 9, for additional discussion of these threats).

The Mexican wolf is listed under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), as endangered wherever it is found (80 FR 2488; January 16, 2015) except in the Mexican Wolf Experimental Population Area, where is it listed as a nonessential experimental population. The current List of Endangered and Threatened Wildlife under the ESA is found in part 17 of title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

The 1982 amendments to the ESA included the addition of section 10(j), which allows for the designation of populations of listed species planned for reintroduction as ''experimental populations.'' Our implementing regulations at 50 CFR 17.81 state that the Service may designate a population of endangered or threatened species that we have released or will release into suitable natural habitat outside the species' current natural range, but within its probable historical range, as an experimental population. Hereafter in this document, we refer to a species-specific rule issued under section 10(j) of the ESA as a ''10(j) rule.''

This Rulemaking Action

This final rule designates Mexican wolves in the Mexican Wolf Experimental Population Area (MWEPA) as a nonessential experimental population on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) with a revised rule issued under section 10(j) of the ESA at 50 CFR 17.84(k). We developed the rule to comply with the District Court of Arizona remand (''March 31, 2018, order'') of our 2015 10(j) rule for the Mexican wolf (80 FR 2512; January 16, 2015).

On October 29, 2021, we published in the **Federal Register** (86 FR 59953) a proposed rule to revise the regulations for the nonessential experimental population designation of the Mexican wolf in the MWEPA in Arizona and New Mexico (''proposed rule''). The proposed rule included a revised population objective, a new genetic objective, and the temporary restriction of three take provisions for the Mexican wolf in the MWEPA, as well as a fresh essentiality determination under section 10(j) of the ESA. We proposed revisions that would individually and collectively contribute to the long-term conservation and recovery of the Mexican wolf by alleviating significant threats and achieving recovery goals consistent with our recovery strategy for the Mexican wolf (USFWS 2017b, pp. 10–17). We sought comments on the proposed rule and on a draft supplemental environmental impact statement (DSEIS) during a 90-day public comment period, ending January 27, 2022. We held three public information sessions and two public hearings during the public comment period. In total, we received more than 82,000 written and oral comments on the proposed rule and DSEIS.

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities'' (59 FR 34270, July 1, 1994), and a recent memo updating the peer review policy for listing and recovery actions (August 22, 2016), we also sought the expert opinion of five appropriate independent specialists regarding the scientific data and interpretations contained in the proposed rule. The purpose of such peer review is to ensure that we base our decision on scientifically sound data, assumptions, and analysis. This final rule incorporates and addresses comments received during the public comment and peer review processes.

For further information on the biology of the Mexican wolf, including its habitat use and lifecycle, the history of conservation and recovery efforts for this species under the ESA, and our legal and statutory framework (including the basis for our action), please see the proposed rule (86 FR 59953; October 29, 2021), which is available at *https://www.regulations.gov* in Docket No. FWS–R2–ES–2021–0103.

Rationale for Revisions to the Experimental Population Designation in Relation to Recovery

Our revisions to the experimental population designation for the MWEPA contribute to the long-term conservation and recovery of the Mexican wolf by alleviating threats and achieving demographic and genetic management objectives that align with several of our recovery criteria for the Mexican wolf from the Mexican Wolf Recovery Plan, First Revision (USFWS 2017b, pp. 18–20) (''revised recovery plan''). The revised recovery plan was not available to serve as a foundation for the revisions to the MWEPA that we finalized in the 2015 10(j) rule (80 FR 2512, January 16, 2015, pp. 2514–2515). First, this rule revises the population objective established in the 2015 10(j) rule of 300 to 325 wolves. In this rule, we state that, based on end-of-year counts, we will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. This average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual population growth rate averaged over the 8-year period must demonstrate a stable or increasing population, as calculated by a geometric mean.

We estimate that when the MWEPA population reaches and maintains the revised population objective in this rule, the population will have a 90 percent likelihood of persistence over 100 years. We consider this level of persistence to

demonstrate that demographic threats have been alleviated to an extent that is consistent with our recovery strategy and criteria for the Mexican wolf (USFWS 2017a, pp. 32–33, 35–36; USFWS 2017b, pp. 9, 11, 13, 18–22; Miller 2017, entire). Therefore, the revised population objective will contribute to the long-term conservation and recovery of the Mexican wolf because it will result in a population in which the threat of demographic stochasticity has been sufficiently ameliorated.

Second, this rule establishes a new genetic objective for the MWEPA. In this rule, we state that the USFWS and designated agencies will conduct a sufficient number of releases into the MWEPA from captivity to result in at least 22 released Mexican wolves surviving to breeding age.

We estimate that when the MWEPA population reaches the genetic objective, 90 percent of the gene diversity available in captivity will have been transferred to the MWEPA. We expect this infusion of available gene diversity to the MWEPA to alleviate the risk of genetic threats in the MWEPA such as inbreeding, lack of heterozygosity, and lack of adaptive potential, consistent with our recovery strategy and criteria for the Mexican wolf (USFWS 2017b, pp. 9, 11, 13–15, 18–20, 22–24). Therefore, the new genetic objective will contribute to the long-term conservation and recovery of the Mexican wolf by lessening or alleviating genetic threats.

Third, this rule temporarily restricts the use of three take provisions from the 2015 10(j) rule: take on Federal land, take on non-Federal land in conjunction with a removal action, and take in response to an unacceptable impact to a wild ungulate herd. For take on Federal and non-Federal land, this rule states that until the USFWS has achieved the genetic objective by documenting that at least 22 released wolves have survived to breeding age in the MWEPA, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

1. Annual release benchmarks (for the purposes of this paragraph, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

2. Permitted take on non-Federal land, or on Federal land during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective.

After the USFWS has achieved the new genetic objective described above, the conditional annual basis for issuing permits will no longer be in effect.

For the provision for take in response to an unacceptable impact to a wild ungulate herd, this rule states that no requests for take in response to unacceptable impacts to a wild ungulate herd may be made by the State game and fish agency or accepted by the USFWS until the genetic objective has been met.

We expect the temporary restriction of three take provisions to reduce the take of released wolves during the near-term period in which we are trying to improve the gene diversity of the MWEPA because the Service will not issue take permits for take on Federal and non-Federal land unless conditional benchmarks toward recovery are met, or accept requests to take wolves in response to an unacceptable impact to a wild ungulate herd, until the genetic objective is met (USFWS 2022a, pp. 26–32, including table 2.1 on pp. 28–29). Reducing the take of released wolves will decrease the amount of time it takes to reach the genetic objective compared to not restricting these forms of take (USFWS 2022a, pp. 116–118). The growth of the MWEPA population in recent years necessitates a strong temporal focus on improving gene diversity in the near term because it will be more difficult to improve gene diversity and alleviate genetic threats at larger population sizes (USFWS 2017b, pp. 33–34).

The time period for the restriction of these three take provisions is based on our expectation that once the genetic objective is reached, the gene diversity of released wolves will have integrated into the population through breeding events between released and wild wolves such that released wolves will no longer represent a pool of unique gene diversity. In other words, as more released wolves survive and breed in the wild, the unique contribution of each released wolf to the gene diversity of the MWEPA diminishes. Because of this scenario, restricting these take provisions beyond the time at which we achieve the genetic objective would not result in the protection of unique gene diversity contributed by wolves released from captivity. Therefore, the short-term restriction of these three take provisions contributes to the long-term conservation and recovery of the Mexican wolf because the restriction will support achieving the genetic objective, which will lessen genetic threats in the MWEPA consistent with our recovery strategy and criteria for the Mexican wolf as just described.

We note that the 2021 minimum population count of 196 wolves in the MWEPA demonstrates the sixth consecutive year of steady growth in recent years and that the population has doubled in size since 2015 (2015 minimum population count of 98 wolves) (USFWS files). With each continued year of positive population growth trajectory, the threat of demographic stochasticity in the MWEPA lessens. Inherent in our efforts to achieve the population objective is our recognition that Mexican wolf mortality from all sources, including human-caused mortality, must be sufficiently low to support population growth and persistence (USFWS 2017a, pp. 31–32; USFWS 2017b, pp. 20–22, 31–34). Therefore, the Service and our partners continue to monitor key demographic rates, balance our utilization of nonlethal and lethal management techniques to address conflict situations, and strengthen efforts to reduce the illegal killing of Mexican wolves (USFWS 2017b, pp. 31–34; USFWS 2019, entire; USFWS 2022b, pp. 30–42).

We note that as of April 1, 2022, we have documented 13 released wolves surviving to breeding age in the MWEPA that contribute to meeting the genetic objective. Also, over the last 4 years (2018–2021), we have seen a steady increase in gene diversity (from 74.54 to 76.23) and a decrease in mean kinship (a measure of the relatedness of individuals in a population to each other) (from 0.2546 to 0.2377), suggesting that our efforts to improve the genetic status of the population are beginning to exert a positive effect. As of August 17, 2021, both of these metrics are at their best values since 2010, when gene diversity measured 76.47 and mean kinship measured 0.235 (Scott et al. 2022, 2020, 2019; Siminski and Spevak 2011–2017; USFWS files). We expect to continue documenting the number of released wolves that survive

to breeding age, including their reproductive activity, and to track population-level genetic metrics to validate improvements in the genetic status of the population.

Additional discussion of our rationale for these revisions is provided in the proposed rule (86 FR 59953, October 29, 2021, pp. 59959–59963).

Experimental Population

Location and Boundaries of the Experimental Population

The Mexican wolf experimental population is located in the MWEPA, as designated in the 2015 10(j) rule (80 FR 2512, January 16, 2015, p. 2558). The boundaries of the MWEPA are the portions of Arizona and New Mexico that are south of Interstate Highway 40 (I–40) to the international border with Mexico (see map at 50 CFR 17.84(k)(4)). The boundaries of the MWEPA are consistent with the recovery strategy established in the revised recovery plan, and the MWEPA is wholly geographically separate from any nonexperimental populations of the same (sub)species, as described in the proposed rule (86 FR 59953, October 29, 2021, pp. 59963–59964).

Overview of the Experimental Population

The MWEPA is a large area in Arizona and New Mexico that includes Federal, State, Tribal, and private land. It contains three managements zones, Zone 1, Zone 2, and Zone 3, that provide areas for initial release, translocation, and occupancy of Mexican wolves (see definitions at 50 CFR 17.84(k)(3) and the map of the MWEPA designated area at 50 CFR 17.84(k)(4)).

Release Procedures

The USFWS and our partners release Mexican wolves into the MWEPA using several different management strategies, including the cross-fostering of captive pups into wild dens as a form of initial release; the initial release of adults or sub-adults individually, as pairs with and without pups, or as multigenerational packs; and translocations of wild wolves from one location to another. We intend to continue releasing Mexican wolves from captivity into the MWEPA primarily to increase the gene diversity of the experimental population as necessary to achieve our genetic objective and alleviate genetic threats to the population. In addition, we may release or translocate wolves for other management purposes such as replacing a mate for a breeding pair due to a wolf mortality or transferring wolves to Mexico. We provide additional detail about our release procedures in the proposed rule (86 FR 59953, October 29, 2021, p. 59964), including our procedures to utilize permanent identification marks and radio-collars to identify Mexican wolves in the MWEPA and differentiate them from wolves that may disperse from other gray wolf populations.

How does the experimental population contribute to the conservation of the species?

We intend to manage the MWEPA population to achieve the recovery criteria in the revised recovery plan for a population of Mexican wolves in the United States (USFWS 2017b, pp. 18–25; 86 FR 59953, October 29, 2021, p. 59965). The following information is summarized from our proposed rule, which can be referenced for additional supporting information (86 FR 59953, October 29, 2021, pp. 59965–59967).

Possible Adverse Effects on Wild and Captive Breeding Populations

Adverse effects on the captive population of Mexican wolves will not occur from the release of captive wolves to the MWEPA because the captive population is managed specifically to support the reintroduction of wolves to the wild and remains capable of supporting both the U.S. and Mexico reintroduction efforts through the release of surplus wolves (Scott et al. 2022, entire). Adverse effects to the wild population in Mexico will not occur because we do not rely on, nor have we conducted any, translocation of wolves from Mexico into the MWEPA.

Likelihood of Population Establishment and Survival

The MWEPA has demonstrated that it is an established population with a high likelihood of survival. In particular, in the last 6 years under the management provisions of the 2015 10(j) rule, the population has grown steadily in size to its current minimum population size of 196 wolves. The Service's Mexican Wolf Recovery Program has transitioned from its previous focus on preventing the extinction of the Mexican wolf (USFWS 2010, p. 79) to pursuing a binational recovery strategy that we intend to achieve within two to three decades (USFWS 2017b, pp. 28–29).

Effects of the MWEPA Population on Recovery Efforts

The MWEPA population contributes to the binational recovery of the Mexican wolf because it serves as the population that counts toward the recovery criteria in the revised recovery plan for a population in the United States. The revisions in this rule bring the management of the MWEPA into alignment with our recovery strategy and criteria for the Mexican wolf in the revised recovery plan to ensure that the experimental population contributes to the long-term conservation and recovery of the Mexican wolf.

Actions and Activities That May Affect the Introduced Population

Consistent with our findings in the past (63 FR 1752, January 12, 1998, p. 1755; 80 FR 2512, January 16, 2015, p. 2551), we do not foresee that the introduced population will be adversely affected by existing or anticipated Federal or State actions or private activities because although some actions or activities may affect individual wolves, these effects will not hinder the growth or distribution of the population or its ability to achieve the demographic and genetic objectives established in this rule, as described in our proposed rule (86 FR 59953, October 29, 2021, p. 59966).

Experimental Population Regulation Requirements

The following requirements are summarized or expanded upon from our discussion in the proposed rule (86 FR 59953, October 29, 2021, pp. 59967–59970):

Appropriate Means To Identify the Experimental Population

The location of the experimental population is the MWEPA, as defined at 50 CFR 17.84(k). We can identify Mexican wolves based on the permanent identification marks we give them prior to release, by radio collar, DNA analysis, or visual observation.

Is the experimental population essential to the continued existence of the species in the wild?

Essential experimental populations are those whose loss would be likely to appreciably reduce the likelihood of survival of the species in the wild (50 CFR 17.80(b)). The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (USFWS and NMFS 1998, p. xix). Inherent in the definition of ''essential'' is the effect the potential loss of the experimental population would have on the species (49 FR 33885, August 27, 1984, p. 49 FR 33890).

The ESA states that, prior to any release, the Secretary must find by regulation that such release will further

the conservation of the species (16 U.S.C. 1539(j)(2)). Reintroductions are, by their nature, experiments, the fate of which is uncertain. However, it is always our goal for reintroductions to be successful and contribute to recovery. The importance of reintroductions to recovery does not necessarily mean these populations are ''essential'' under section 10(j) of the ESA. In fact, Congress' expectation was that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34). The preamble to our August 27, 1984, final rule reflects this understanding, stating that an essential population will be a special case and not the general rule (49 FR 33885, August 27, 1984, p. 49 FR 33888). When the Service published the final rule for the MWEPA designation in 1998, we did not anticipate making another essentiality determination for the MWEPA in the future. However, the remand of the 2015 10(j) rule requires the Service to make a fresh essentiality determination because the geographic expansion of the MWEPA results in wolves occupying new areas that were not contemplated for wolf occupancy during the original essentiality determination. At the time of the original determination, we found the experimental population to be ''nonessential'' because the captive population provided a secure source of surplus animals for reintroduction and the primary repository of genetic material for the species; therefore, if the reintroduced wolves did not survive, additional reintroduction efforts could be taken if the reasons for failure were understood (63 FR 1752, January 12, 1998, p. 1754).

This rule determines that the experimental population in the MWEPA, as defined by the geographic revision and expansion of the MWEPA in the 2015 10(j) rule, is not essential to the continued existence of the Mexican wolf in the wild under section 10(j) of the ESA. We reference our proposed determination (86 FR 59953, October 29, 2021, pp. 59967–59969), and offer the following rationale to clarify the information we relied on in our determination.

Mexican wolves currently occur in two locations in the wild: in the MWEPA in the United States, and in the Sierra Madre Occidental in northern Mexico, where the population numbers around 45 wolves in 2022. Reintroduction efforts in Mexico have been underway for over a decade, demonstrating sustained effort to establish and manage a wild population that contributes to recovery under the ESA. Mexico continues to focus on releasing wolves to the wild (from captivity or translocated from the MWEPA) and monitor natural population growth and expansion toward achieving the recovery criteria in the revised recovery plan. If the Mexican wolf population in the MWEPA were lost, Mexican wolves would continue to persist in the wild with Federal legal protection from Mexico. Thus, the existence of a protected wild population outside of the MWEPA is one of the factors in our determination that the experimental population is not essential to the continued existence of the Mexican wolf in the wild.

The second, and equally important, factor in our determination is our expectation that we could restart a population in the MWEPA or elsewhere in suitable habitat in the United States if the unexpected loss of the MWEPA were to occur. Our expectation is supported by our history—that is, the experiment to reintroduce Mexican wolves to the wild, which we began in 1998 as part of the species recovery effort under section 10(j) of the ESA, has demonstrated success and is repeatable. Several pieces of information influence our expectation that a future re-reintroduction is feasible and, therefore, support a nonessential determination, including the following:

If the unexpected loss of the MWEPA population were to occur, the Service and our partners have the knowledge and logistical capability to re-start the population and manage it to contribute to the long-term conservation and recovery of the Mexican wolf. To start, the Mexican wolf is a well-known subspecies for which we have gained first-hand biological and ecological knowledge for more than two decades. We have observed, monitored, and analyzed wolves' natural behavior in the wild such as the establishment of territories, dispersal, reproduction, survival, and mortality. We have reported our findings throughout the course of the reintroduction and recovery effort, including program reviews (Paquet et al. 2001, entire; AMOC and IFT 2005, entire), recovery plans (USFWS 1982; USFWS 2017a; USFWS 2017b), regulatory documents (*e.g.,* 80 FR 2488, January 16, 2015; 80 FR 2512, January 16, 2015), environmental impact statements (USFWS 1996, entire; USFWS 2014, entire; USFWS 2022a, entire), and annual progress reports covering every year of the reintroduction (USFWS files). In addition, significant scientific research has been conducted regarding many facets of Mexican wolf biology and ecology (*e.g.,* Parsons and Nicholopoulos 1995, entire; Hedrick et al. 1997, entire; Reed et al. 2006, entire; Asa et al. 2007, entire). Because of our experience establishing and maintaining a population and the extent of supporting biological information available, we understand the needs of this subspecies sufficiently to undertake another reintroduction.

In addition, since 1998, we have learned about the communities in which the reintroduction and recovery effort takes place. Within this context, we have demonstrated our ability to explore solutions to a variety of challenges and to adaptively manage the reintroduction effort. We have:

- Tested and utilized different wolf release techniques, including hard and soft releases; release of adults, pairs, or packs; and cross-fostering puppies;
- Adapted our response to conflicts based on the demographic status of the experimental population and the needs of local communities, including our use of management tools such as translocations, removals, and novel nonlethal techniques;
- Provided animal husbandry in captive, semi-captive, and wild settings, including vaccination protocols to reduce the risk of diseases in Mexican wolves or the transfer of diseases to humans;
- Developed and expanded collaborative recovery efforts with partners in both the United States and Mexico;
- Sustained budgetary and staffing capacity for the reintroduction effort for several decades, including public outreach programs and stakeholder engagement;
- Championed and participated in financial programs to reduce economic impacts on livestock operators; and
- Adjusted the regulatory, policy, and guidance frameworks that provide the structure for the reintroduction and recovery effort.

Therefore, we have the capability to construct a management approach for a new reintroduction (again, assuming understanding of the reasons for the loss of the current population) and adjust it as necessary to support the release, establishment, growth, vigor, and maintenance of an experimental population within a human-dominated landscape. Specifically, we expect to release packs, pairs, and individual animals over several years to re-establish the population as appropriate to the circumstances. While the release of adult wolves is not currently our preferred release strategy, we recognize that the release of adult wolves would be necessary and appropriate if we were restarting a reintroduction, and we

would work with our partners to select preferred release sites. We do not expect to achieve a population of the current size (close to 200 wolves) within the first few years, but rather seek to establish a base of released wolves representative of the gene diversity available in captivity. We will continue releases as necessary and, with our partners, support the natural growth and expansion of the population through the use of a variety of adaptive management strategies and tools such as those we have utilized since the reintroduction began.

If we were to conduct a new reintroduction due to the loss of the current population, we would rely on the availability of captive Mexican wolves for release to the wild. Therefore, the capability of the captive breeding program to provide wolves to re-start the population and provide long-term support of the reintroduction over at least several decades is an important factor in our essentiality determination. Our assessment of the capability of the captive breeding program rests first on the mission of the Mexican Wolf Species Survival Program (''SSP''), which is to support the reestablishment of the Mexican wolf in the wild through captive breeding, public education, and research. The dedication of this program to reestablishment supports our expectation that participating facilities will support and engage in the new reintroduction effort (Scott 2022, pers. comm.). Second, the logistical capacity of the captive breeding program has increased significantly since 1998, such that it is more capable of producing surplus wolves for release to the wild today than it was when we first designated the MWEPA over two decades ago. In 2021, the captive program housed 387 wolves in 62 facilities (Scott et al. 2022, p. 7), compared to fewer than 200 wolves in less than 50 facilities in 1998. The physical capacity of the captive breeding program could continue to expand with the addition of new facilities, which would further increase the number of surplus wolves produced as well as benefitting ongoing genetic management needs (Scott et al. 2022, p. 10). In addition to its expanded physical capacity, the SSP has benefitted from over four decades of husbandry experience and research across many participating institutions, again supporting our contention that the captive breeding program has the capacity and capability to re-start and sustain support for a wild population.

Importantly, one question that is central to the potential to restart a reintroduction of the Mexican wolf in the future is whether surplus wolves produced by the SSP would have sufficient gene diversity to establish a genetically robust population. This concern stems from the slow loss of gene diversity that has occurred, and will continue to occur, in the captive population because no new founders are available to add diversity (Scott et al. 2022, pp. 9–10). This is a difficult question to answer because a finite threshold of gene diversity below which reintroduction would not be possible for Mexican wolves has not been defined or observed by the Service, the SSP, or other researchers. In other words, we recognize that re-starting a reintroduction at some point in the future when the captive population has lower gene diversity than its current level (Scott et al. 2022, p. 9) means that genetic concerns will be amplified more than they are today, but that does not equate to infeasibility. Rather, surplus wolves would be available to release to the wild that would still represent the available gene diversity remaining from the founding wolves and the three integrated captive lineages. In fact, a population could be restarted today that would potentially be equally or more genetically diverse with lower overall mean kinship and better representation of the three Mexican wolf lineages than the first reintroduction effort simply by the selection of different wolves and different management strategies in the wild when the population was small. In addition, genetic management strategies, such as an expansion of the number of breeding pairs in the captive population (Scott et al. 2022, p. 10), the use of stored genetic material from captive wolves (such as frozen semen and oocytes (Scott et al. 2022, appendix 9, pp. 82–85)), or the use of other novel reproductive or genetic technologies, could be used to slow the loss of gene diversity in captivity over time and offer robust future reintroduction scenarios with appropriately diverse surplus wolves.

As we have discussed throughout this rule, we expect the MWEPA to further the conservation and recovery of the Mexican wolf by contributing to the persistence of a population that achieves specific recovery goals for the subspecies. However, we consider the MWEPA nonessential because the loss of all reintroduced Mexican wolves within the MWEPA is not likely to appreciably reduce the likelihood of survival of the subspecies in the wild. Our determination is based on the existence of a second wild population of Mexican wolves, our increased capability to initiate and maintain a reintroduced population of Mexican wolves, and the ongoing maintenance of the captive population.

Management Restrictions, Protective Measures, and Other Special Management

We have developed a section 10(a)(1)(A) permit under section 10 of the ESA to allow for certain activities with Mexican wolves that occur both inside and outside the MWEPA. If Mexican wolves travel outside the MWEPA, we intend to capture and return them to the MWEPA or place them in captivity. This approach is consistent with the revised recovery plan, which directs Mexican wolf recovery south of Interstate Highway 40 (I–40) in Arizona and New Mexico. Mexican wolves are managed south of I–40 under this rule, which provides management flexibility and contributes to the conservation and recovery of the Mexican wolf. Mexican wolves that move outside of the geographic boundaries of the MWEPA are fully endangered and the allowable forms of take provided for in this rule to address conflict situations are not available. Livestock operators and the public cannot haze or harass wolves outside of the MWEPA without violating the ESA.

Review and Evaluation of the MWEPA Population

As described at more length in our October 29, 2021, proposed rule, the following evaluations of the MWEPA population and the rangewide progress of the Mexican wolf toward recovery will be forthcoming:

- Evaluation of this revised rule 5 years after rule implementation begins (*i.e.,* one evaluation based on data through the 2027 annual population count, synchronized with the 2027 recovery plan evaluation, below, for publication in 2028);
- MWEPA quarterly reports (*i.e.,* four reports per year, annually, ongoing);
- MWEPA annual reports (*i.e.,* one report per year, annually, ongoing);
- 5-year status evaluations of the Mexican wolf subspecies pursuant to section 4(c)(2) of the ESA (*i.e.,* one report every 5 years, with next evaluations occurring in 2023 and 2028, ongoing);
- 5- and 10-year recovery progress evaluations, pursuant to the revised recovery plan (*i.e.,* one report for each evaluation, using data through 2022 and 2027, with publication in 2023 and 2028, respectively); and
- A phasing evaluation for western Arizona pursuant to 50 CFR

17.84(k)(9)(iv)(D) (*i.e.,* one evaluation in 2023).

Consultation With State Game and Fish Agencies, Local Governments, Tribes, Federal Agencies, and Private Landowners in Developing and Implementing This Rule

In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the USFWS, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. In addition to the information provided in the proposed rule (86 FR 59953, October 29, 2021, p. 59970), we also describe our coordination and consultation efforts in the final supplemental environmental impact statement (FSEIS) (USFWS 2022a, pp. 164–166).

Summary of Comments and Recommendations

From April 15 to June 15, 2020, we conducted a public scoping process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) based on our intent to modify the 2015 final 10(j) rule (see 85 FR 20967, April 15, 2020). We received more than 87,000 public comments during scoping. We responded to these comments in the draft supplemental environmental impact statement (DSEIS), appendix G (USFWS 2021, pp. 182–227). We subsequently opened a 90-day public comment period on the proposed 10(j) rule and DSEIS on October 29, 2021 (86 FR 59953). During the public comment period, we held three public information sessions and two public hearings; approximately 400 members of the public attended and participated in these events. We received more than 82,000 public written and oral comments during the comment period. In total, we received more than 169,000 comment submissions over the course of the two comment periods.

As part of this rulemaking, we have carefully reviewed the requirements of NEPA and its regulations (Council on Environmental Quality regulations at 40 CFR 1502.9); this final rule, as well as the process by which it was developed and finalized, complies with all provisions of the ESA, NEPA, and applicable regulations. We identified public comments specific to the NEPA process and provided responses to these issues in the FSEIS rather than in this rule; in addition, we carried the scoping comments and responses forward from the DSEIS to the FSEIS because the scoping comments and responses addressed a number of issues that were brought up subsequently during the public comment period on the DSEIS and proposed rule (USFWS 2022a, pp. 188–240). In a few cases, a comment was equally pertinent to the rule as well as the FSEIS, in which case we have included our response in this rule as well.

Below, we provide synthesized, substantive comments pertinent to the rulemaking and our responses. We considered substantive comments to be those that provided information relevant to our requested action such as data, pertinent anecdotal information, or opinions backed by relevant experience or information, and literature citations. Due to the similarity of many comments, we combined multiple comments into a single, synthesized comment for many issues. We considered non-substantive those comments that expressed a statement or opinion without providing supporting information or relevance; restated data or information that we already have but without an alternate perspective to consider; restated elements of the March 31, 2018, order; or were beyond the scope of our proposed revisions as defined during scoping. Comments from peer reviewers, Federal agencies, and State agencies are grouped separately. Comments from local governments are included in the general public comments. We did not receive any comments from Native American Tribes. All substantive information provided during the comment periods, including the public hearings, has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited and received expert opinions from five knowledgeable individuals with expertise that included a Doctor of Philosophy degree (Ph.D.) or Master of Science degree (M.S.) with significant experience in wildlife ecology or a related field; expert knowledge of wildlife biology and management, demographic management of mammals (especially carnivores), population modeling, small population management, genetics of small populations, captive breeding and reintroduction of a species to the wild, scientific literature on wolves or other carnivores, and/or human dimensions or socioeconomic considerations related to large carnivore management; and prior experience as a peer reviewer for scientific publications.

We asked peer reviewers to respond to seven scientific questions regarding the proposed revision to the regulations for the experimental population designation of the Mexican wolf, as appropriate to their expertise, in addition to providing their general review. We reviewed all peer review comments that we received. Below, we provide a summary of the peer reviewers' answers to our seven questions, as well as our responses to singular issues raised by peer reviewers that we consider having particular bearing on our ability to support the final rule with the best available information. In addition to the summary and responses below, we have incorporated their information and recommendations into this final rule as appropriate.

1. A 10(j) rule may provide flexibility for managing a reintroduced species but must foremost further the conservation of the species. Does the balance of the proposed rule, in total, contribute to the conservation and recovery of the Mexican wolf?

Four peer reviewers answered this question. One peer reviewer did not think the proposed rule, in total, contributes to the conservation and recovery of the Mexican wolf. This reviewer stated that the proposed rule relies heavily on Mexico and private entities to contribute to recovery, and that designating and managing the population as nonessential is a high-risk approach. One reviewer agreed that the proposed rule would contribute to the conservation and recovery of the Mexican wolf, but identified concerns with the methodologies used to depict the population's trajectory and to measure gene diversity, and also identified the need for additional clarity related to allowable forms of take outside of the MWEPA, the relationship between the proposed restricted forms of take and illegal take, and whether the program's human-wolf conflict measures are effective in reducing illegal take. Another reviewer agreed that all of the proposed revisions would contribute to the conservation and recovery of the Mexican wolf and cited recent population growth and the use of supplemental feeding and cross-fostering techniques as indications of, or contributing factors in, the Service's recent progress toward demographic and genetic recovery goals. The fourth reviewer responded that in total the proposed rule would contribute to the conservation and recovery of the Mexican wolf but caveated that ''contribute to'' is not synonymous with ''ensure.''

2. Are the expected effects of the proposed revisions on the overall biological status of the experimental

population adequately described and supported by relevant analysis? If not, what information is missing and how is it relevant?

One reviewer stated that the population viability analysis in the revised recovery plan relied on by the Service as the foundation for establishing the proposed population and genetic objectives is likely very robust for predicting population growth at low population densities. However, this reviewer suggested updating the model in 5 to 10 years with updated vital rates and incorporating density-dependent effects to address the potential for the model to underestimate extinction probabilities and overestimate genetic diversity in the long term, because the data used in the population viability model (Miller 2017, entire) may overestimate the proportion of females breeding and do not include a link between density and reproduction. This same reviewer also cautioned that removal of wild-born wolves could impact gene diversity if those wolves had advantageous mutations.

Another reviewer stated that the proposed population objective is an improvement from the population objective in the 2015 10(j) rule and provided critique that the program's current methodology to document minimum population size annually may not provide an accurate and precise population estimate against which to measure progress toward the proposed population objective.

A third reviewer responded to this question by reiterating a concern that the methodology used to document the minimum population size may be inadequate to determine whether the population's growth rate is stable or increasing, as necessitated by the proposed population objective. This reviewer provided recommendations on several methodologies and statistical models to estimate survival or other demographic parameters for the Service to consider and stated support for updating the population viability model used in the revised recovery plan during the 5-year evaluation of the recovery plan. The reviewer also questioned how the Service arrived at the genetic objective of 22 released wolves surviving to breeding age based on the population viability model in the revised recovery plan and cautioned against using model results as actual targets rather than as guideposts. This reviewer suggested that measuring genetic variation would be a more appropriate method to assess genetic diversity in the MWEPA than counting the number of released wolves that survive to breeding age. The reviewer discussed inbreeding and reduced fitness in Mexican wolves and suggested that allowing Mexican wolves to hybridize with other wolf ecotypes (gray wolves from other populations) may contribute to the future adaptive potential of the Mexican wolf.

The fourth reviewer stated that each of the proposed revisions should have a positive impact on population performance and that the expected effects of the revisions are adequately described, noting that the removal of an upper target for abundance is particularly important for long-term sustainability of the Mexican wolf. This reviewer noted that the inclusion of more than 15 years of Mexican wolf data in the population viability model and the selection of conservative values for model parameters add significant confidence to the model's predictive power for demographic and genetic uses. The reviewer noted that the habitat modeling by Martínez-Meyer et al. (2017) also substantively informs recovery efforts, while noting that updating the habitat model over time with information on population performance could address general concerns related to the reliability of habitat quality assessments that rely solely on presence data. This reviewer questioned why the Service did not use a direct measure of genetic diversity as a genetic objective and stated that the Service overstated the future conditions of the population in response to released wolves surviving to breeding age.

3. Does the proposed rule, including the allowable forms of take, allow for the experimental population to achieve the demographic recovery criterion for the United States in the Mexican Wolf Recovery Plan, First Revision (2017)?

One reviewer stated that the proposed rule does not allow for the experimental population to achieve the demographic recovery criterion because there is no numerical trigger to determine when different allowable forms of take are permitted. Another reviewer stated that the proposed reduction in take would have a positive effect on Mexican wolf recovery but would not address the problem of illegal take, which accounts for the majority of human-caused mortality for the Mexican wolf. This reviewer recommended using a ''similarity of appearance'' listing for coyotes within the MWEPA under section 4(e) of the ESA. A third reviewer stated that they believe the proposed rule would contribute to achieving the recovery criterion in the revised recovery plan based on the recent annual increases in the MWEPA population, the Service's ongoing efforts to reduce conflict and increase support for the recovery effort, and the removal of the upper threshold on wolf abundance.

4. Does the proposed rule, including the allowable forms of take, allow for the experimental population to achieve the genetic recovery criterion for the United States in the Mexican Wolf Recovery Plan, First Revision (2017)?

One reviewer stated that the proposed revisions to the allowable forms of take may not avoid the potential for negative impacts to genetic diversity because the revisions consider only released wolves, they do not consider wild-born wolves with new genetic mutations that may be important to the population's genetic diversity, especially its heterozygosity. Another reviewer restated concern for whether the proposed genetic objective is valid compared to other ways to measure the genetic status of the population. A third reviewer did not mention the effect of the take provisions on the ability of the proposed rule to achieve the genetic criterion beyond a general statement acknowledging the Service's efforts through memoranda of understanding (MOUs), education/outreach, and diversionary feeding to reduce conflicts that could lead to wolf removals. This reviewer stated that the success of cross-fostering also provides evidence that the genetic criterion will be met. This reviewer reiterated concern that the genetic objective is not a direct measure of genetic health but stated that the genetic objective will likely lead to the genetic benefits the Service is expecting and is easy to quantify and measure.

5. Is the information, data, and analysis we provide to substantiate our essentiality determination based on the best available science? Is there scientific information or data that we did not include in our essentiality determination that is relevant and should be considered?

One reviewer stated that the logic behind designating the MWEPA as nonessential is not well supported and is a high-risk approach due to the other wild population occurring in Mexico and the captive population being run by private entities that are not legally bound to recover the Mexican wolf. Another reviewer agreed that the MWEPA population could likely be restarted from captivity but suggested the Service consider an essentiality designation because the growth of the second wild population of Mexican wolves in Mexico has been fairly stagnant and the reintroduction effort is very expensive. This reviewer also questioned whether the nonessential

determination limits the ability of the Service to reintroduce the Mexican wolf outside of its historical range. A third reviewer communicated their impression that the concept of essentiality is convoluted and ambiguous, and that the Service was unclear in its discussion whether we were referring to the subspecies at-large or the Mexican wolf in the wild. This reviewer stated that given the emphasis on the ''three Rs'' (resilience, representation, and redundancy) in the recovery of the Mexican wolf, considering the MWEPA as nonessential to the persistence of wild wolves seems tenuous, although according to strict legal definitions may be true.

6. Do the proposed revisions, and the rule as a whole, allow for flexible and responsive management of conflict situations that can address local community concerns related to social and economic impacts while still providing for the conservation and recovery of the Mexican wolf?

One reviewer stated that the rule allows for flexible and response management of conflict situations but may not adequately provide for the conservation and recovery of the Mexican wolf. Another reviewer stated that the management activities provided for in the rule are generally consistent with recommendations from the literature on reducing wildlife conflicts to support conservation. This reviewer stated that the scientific literature contains mixed evidence as to how depredation compensation rates should be determined, with some literature suggesting that full compensation reduces incentives for producers to undertake proactive measures to reduce conflicts and therefore may lead to more depredations, while other literature suggests that additional indirect costs should be incorporated to fully compensate losses. A third reviewer stated that the conflict management efforts appear to be comprehensive, and an evaluation may assist in determining which components of the program are most effective. The fourth reviewer stated that the answer to the question is values-based and therefore difficult to predict. This reviewer gave the example that the rule may make demonstrable progress toward reestablishing Mexican wolves but still may not satisfy certain stakeholders. However, this reviewer stated that, collectively, the proposed revisions and the rule would allow for flexible and responsive management to address conflicts, further stating that the rule clearly attempts to minimize significant impacts and to produce realistic predictions for various expenses, recognizes the need for adaptive management and maintaining broad support for recovery efforts, and demonstrates continued effort to pursue funding and partnerships to ensure the overall success of the program.

7. Is the rule based on the best available biological and social science? Are there demonstrable errors of fact or interpretation of data or scientific information in the proposed rule?

One reviewer stated that using a geometric mean, rather than the arithmetic mean, would better capture population performance in the demographic recovery criterion and population objective. Another reviewer provided recommendations on new analytical methods to evaluate data that could lead to improved inferences and management decisions.

Several reviewers commented on the proposed nonessential designation. One reviewer stated that reliance on a captive population to replenish wild populations after an extinction event does not represent the survival of the species in the wild or recovery across ecologically and geographically diverse areas in the subspecies' range, as recommended in the recovery strategy in the revised recovery plan. This reviewer further cautioned that the proposed rule considers wolves in captive-breeding facilities and in Mexico to be ''populations,'' but this is a very high-risk approach because private facility participation in captive breeding is voluntary (facilities are not legally bound to recover Mexican wolves), and the Mexican government is not bound to U.S. law. Additionally, this commenter stated that more than 90 percent of the remaining wild Mexican wolves inhabit the MWEPA, and it is likely that new genetic mutations have emerged, providing an evolutionary avenue for locally adapted Mexican wolves. Because these alleles do not exist in the captive population or in Mexico's population, the reviewer considers the MWEPA essential.

One reviewer stated that while there were no observable errors of fact or interpretation with the social science data or literature presented by the Service, there is additional literature related to cattle prices, indirect effects from livestock depredations, and management costs that may have relevance for the determination of economic impacts of the proposed revisions. This reviewer provided specific examples of cattle price variability to highlight the variation in economic impacts experienced by an individual producer from a depredation and the management decisions that follow. This reviewer also provided information about the potential indirect economic effects of depredations and noted that the Service had accounted for some, but not all, possible indirect effects in its analysis, while also noting that a systematic accounting of all possible indirect effects is not available in the literature. The reviewer stated that there is insufficient evidence to establish the extent of indirect effects. The reviewer also provided examples of management costs associated with depredation activity, including fence maintenance and repair from livestock prone-to-flight behavior, veterinary costs of injured animals, and other management interventions such as herding dogs and additional riders to check herds.

Another reviewer stated that the proposed rule is arguably based on the best available science, although that does not mean there may not be debate in the scientific community over the choice of models, data to populate them, statistical evaluations, and interpretation of results. This reviewer clarified that no single issue or issues collectively mentioned by the reviewer would result in the inability to achieve recovery. This reviewer suggested the Service add a description of our annual count methods because that is how the Service will assess progress toward the population objective, recommended that the Service conduct a cost-benefit analysis of diversionary feeding related to effective law enforcement levels or other actions, and questioned whether the potential impacts of the border wall on Mexican wolf recovery, other than on the probability of wolf dispersal across the border, were considered.

Specific Peer Review Comments

Comment: The MWEPA population estimates are based on an ad hoc estimation approach (USFWS 2019, pp. 21–22) and these point estimates are used to depict population trajectory and estimate population growth rate. There is no measure of the precision of the estimates; this could influence estimates of extinction risk.

Our response: We conduct an annual population minimum count in the MWEPA. Our methods for conducting these counts have been consistent since 2008, and thus should be comparable over time and reflect the population trend. The minimum counts represent wolves and/or wolf sign observed between November and early February each year. Because we utilize a minimum count, we consider our results to serve as a conservative population estimate (*i.e.,* the true population is above the reported count). Thus, extinction risk is appropriately conservative and may be slightly

overestimated based on utilizing minimum counts. For small populations of mammals, population counts are likely the best method; however, we also recognize that research is appropriate at this stage of the MWEPA reintroduction (196+ wolves) to determine appropriate population estimate methods in the future for a larger population of wolves (*i.e.,* more than 300).

Comment: MWEPA population estimates are essentially point estimates of the ''minimum number known alive,'' and their validity, as actual population estimates, is dependent on whether the probability of detection each year remains constant. These counts are an index of population size, yet they are used to estimate population growth rate, but there are two issues here. As mentioned, it is not known if the probability of detection between years is constant (in this case it is assumed), and there is no measure of precision around the count, so whether the count of population size between years actually differs is obscured.

Our response: See our response above. In addition, for small populations of mammals that are hard to detect through sightability models or double counts from the air (*e.g.,* wolves avoid detection from helicopters by simply not moving, and it is only through radio telemetry that we are able to find collared wolves or the uncollared wolves associated with them), minimum population counts are likely the best method to determine or estimate population size. We have had very limited success attempting to grid areas with helicopters to detect wolves without radio telemetry, even with food caches placed in areas of known wolf occupancy. Thus, we rely on tracks, scats, and remote cameras to document uncollared packs.

Comment: Population estimates are made at the end of the year and include all age classes; the number of adult and subadult wolves should be presented separate from the number of pups surviving until the end of the year.

Our response: We document the number of pups surviving until the end of the year during our annual population count. We are currently updating the content and format of our annual reports (for 2021 and subsequent years) and will consider providing this information in future annual reports.

Comment: The genetic objective of releasing 22 wolves does not ensure that these wolves actually breed and contribute their allelic diversity to the wild. Despite the realistic probabilities used to predict the success of released wolves contributing their genes to the population, they are still just predictions and should be stated as such.

Our response: We have clarified our language to describe the future conditions of the population where they are speculative.

Comment: The continued monitoring of the genetic variation present in the wild Mexican wolf populations would be a more appropriate method to assess genetic diversity and its erosion over time, compared to assuming that when a certain number of wolves reaches breeding age they will mate, their offspring will survive and reproduce, and genetic diversity will be maintained.

Our response: The genetic objective we are establishing serves as an indicator that we have transferred a large degree of the gene diversity available in captivity to the wild population. Our genetic monitoring will continue to include multiple components, including the number of released wolves surviving to breeding age and their reproductive success when known, as well as genetic metrics for the population such as gene diversity and mean kinship. As stated in our responses above, we recognize that we need to adapt our current genetic and population monitoring strategies in the near future to address logistical issues associated with monitoring a growing population and ensuring our methods continue to produce reliable estimates to track progress toward recovery. We are beginning to explore different monitoring schemes and will discuss relevant findings or decisions in upcoming program reviews.

Comment: Permitting or facilitating adaptive introgression may be necessary to ensure the adaptive potential of the MWEPA population. Is the Service planning an introgression zone between gray wolves in Colorado and Mexican wolves?

Our response: Genetic monitoring of the MWEPA population will continue to be necessary to ensure that genetic threats to the Mexican wolf are lessened and alleviated. We currently collect and report genetic data on individual wolves and the population based on the known pedigrees of collared wolves and blood and scat samples taken in the field; as explained in our responses above, we expect to modify our genetic monitoring scheme over time. We recognize adaptive introgression can be a useful genetic tool in certain situations. At the current time, the Service does not have any intention to initiate or allow adaptive introgression between gray wolves and Mexican wolves as part of our genetic management of Mexican wolves. As of April 2022, Colorado Parks and Wildlife has not solidified its gray wolf reintroduction strategy; therefore, it is difficult to determine the timing and extent of future dispersal contact that may occur between gray wolves and Mexican wolves or the potential genetic effect of this contact on Mexican wolves. As more information becomes available, we will consider the implications in our management and monitoring strategies.

Comment: Where did the policy of releasing 22 wolves that attain breeding age, which are then assumed to contribute allelic diversity to the wild population, originate from?

Our response: Miller (2017) explored various population viability scenarios that demonstrated that 22 released wolves surviving to breeding age, with some portion of surviving animals breeding, would achieve representation in the wild of 90 percent of the gene diversity available in captivity (see table 16 in Miller 2017). Specifically, the ''[EISx2]'' scenarios resulted in gene diversity retention relative to the SSP for the MWEPA of 0.897–0.901, which is effective in achieving the Service's objective to ensure the wild population represents 90 percent of the gene diversity in captivity.

Comment: It appears that inbreeding depression or reduced fitness is likely occurring in the MWEPA. A reanalysis of data that explores the effect of the inbreeding coefficient of wild pairs on whether they successfully produce a litter, on litter size, and pup survival is warranted with a more up-to-date dataset (1998 to 2021).

Our response: The Service agrees that reanalysis of inbreeding depression will be a necessary task during the recovery of the Mexican wolf. We will consider a reanalysis of inbreeding depression during the 5- or 10-year recovery plan evaluations in order to guide the ongoing recovery effort; however, we have not solidified our plans for the evaluations at this time. The inbreeding analysis conducted in association with the revised recovery plan and supporting biological report (USFWS 2017b, p. 33 and appendix C) is based on the largest, most comprehensive, and up-to-date data set available (89 litters over 16 years). It suggests that inbreeding may affect the probability of producing a litter but is not significantly affecting litter size, as previously thought (Fredrickson et al. 2007).

Comment: Illegal take of Mexican wolves has been high, particularly in the last decade. Although there is a comprehensive human-wolf conflict management program in place, its effectiveness or relation to allowable

forms of take is not clear; will restricting forms of legal take reduce illegal take?

Our response: We have not conducted a formal assessment of our human-wolf conflict management strategies at this time to determine their individual efficacy in reducing human-caused mortality of Mexican wolves. The purpose of the take restrictions in this rule is to ensure that the management flexibility authorized in the MWEPA supports the long-term conservation and recovery of the Mexican wolf, and that the likelihood of take is reduced during conflict situations in which other management options are available. We note that we are currently revising the revised recovery plan to diversify and strengthen the recommended actions the Service and our partners may implement to reduce human-caused mortality. We will assess the efficacy of our efforts to reduce human-caused mortality in the 5-year review of the revised recovery plan in 2023.

Comment: Under section 4(e) of the ESA (''Similarity of Appearance Cases''), the Secretary of the Interior can deem another species as endangered or threatened if that species is so similar in appearance that curtailing take of that species would help conserve the endangered species. In this case, preventing take of coyotes (*Canis latrans*), which can be confused with the Mexican wolf, may help curtail illegal take of wolves.

Our response: A section 4(e) ''similarity of appearance'' listing would be a separate regulatory action under the ESA and is therefore beyond the purview of this rule.

Comment: Cross-fostering and supplemental feeding appear critical to achieving genetic goals. Carroll et al. (2019) argued that supplemental feeding could mask the effects of inbreeding; however, relevant field data indicate survival of wolf pups that are supplementally fed is likely enhanced and this methodology will likely increase the rate at which 22 individuals are integrated into the population.

Our response: We agree. We supplementally feed most packs (a few packs are logistically too difficult to feed) that have cross-fostered pups to increase the likelihood that cross-fostered pups survive.

Comment: Carroll et al. (2019) criticized the population viability model for maintaining a long-term reliance on supplemental feeding because it provided a demographic boost that was important in achieving demographic goals, but Miller (2017) also demonstrated that if ultimately it is determined that supplemental feeding is inappropriate, there are other ways to maintain growth in the wolf population (*e.g.,* boosting adult survival).

Our response: We agree. We are committed to maintaining the growth of the Mexican wolf population until we reach our recovery goals through a variety of management actions; we expect to reduce supplemental or diversionary feeding in the future as we scale back management support of the population in association with meeting recovery goals and documenting that threats have been alleviated.

Comment: The population viability model (Miller 2017) did not include density dependence or a link between density and reproduction. The model results may be reliable for near-term population projections (5 to 10 years) but likely underestimate extinction probabilities and overestimate genetic diversity in the long term, because they overestimate effective population size from too many breeding females. The population viability model could be revised in the future by updating the vital rates populating the model and including density-dependent effects and group sizes, particularly if density increases.

Our response: Miller (2017) did not include density-dependent reproduction in the model because there is no scientific evidence supporting a link between the number of pups born, their survival, and population density (p. 6). The model did include a density-dependent mortality function but acknowledged that Mexican wolf density in the MWEPA is low enough that density-dependent effects on mortality are not likely to occur (ibid, p. 7). We intend to revisit the population viability model in the future and will investigate data for any demonstrable changes from previous projections. For instance, we have observed higher annual growth rates than predicted by the model.

Comment: The proposed rule states that if no released wolves were removed during the prior year, then any removals that were conducted would not negatively impact gene diversity. This may not be true. It depends on which wolves are removed; for example, removing diverse wild-born individuals could have a negative effect on gene diversity if those wolves have new, advantageous mutations.

Our response: We understand the perspective offered by the reviewer but consider it important to recognize that we may not always have the ability or information to determine whether a particular wolf has a new, advantageous mutation when we are trying to resolve a conflict situation. We have revised our language where relevant to ensure we do not suggest that wild wolves may not have valuable gene diversity. Our approach to count the number of released wolves surviving to breeding age in both the genetic objective and associated benchmarks is focused on the transfer of captive gene diversity to the wild and supporting the success of those wolves to reach breeding age.

Comment: Although Miller (2017) used population and vital rate estimates from Mexican wolves, estimates of survival of Mexican wolves were made using the Heisey and Fuller (1985) method, and this method has assumptions and sampling requirements that can be difficult to verify. Given the large number of wolves that have been radio-collared over the course of the recovery program, estimates of survival could be explored using more robust statistical models, such as Cox-proportional hazard models or known-fate models, or integrated population models. Such modeling approaches should be considered in subsequent analyses.

Our response: We will consider alternative analytical approaches in the future for estimating survival; however, the methods utilized are within scientific standards, particularly for a population with limited emigration or immigration (Miller 2017, appendix D, pp. 67–72).

Comment: Beyond decreasing the probability of wolf dispersal, were other potential implications of a border wall and the associated increase in human disturbance (*e.g.,* related to law enforcement) considered?

Our response: We did not consider the implications of the border wall during the development of the regulatory revisions in this rule because we do not think the border wall or associated human disturbance will affect the ability of the MWEPA to support a robust population of Mexican wolves. We agree that the border wall could affect wolf territory configuration and dispersal in localized areas near the border occasionally, but not to an extent that threatens the persistence of the population or its ability to achieve the population objective. Habitat along the border is typically unsuitable, or has low suitability, and we do not expect wolves to occupy this area consistently.

Comment: There does not appear to be a numerical trigger to distinguish when different allowable forms of take are permitted. The proposed rule would allow the population to be reduced to a low number as long as no released wolves are part of the allowable take. Recovery goals are both genetic and numerical; with no numerical threshold

for when proposed allowable take is permitted or not, progress toward recovery could be hindered.

Our response: This rule does not include a numerical trigger that dictates the utilization of allowable forms of take in relation to population size, as our focus in this rule is to comply with the March 31, 2018, order to ensure that the expanded take flexibility authorized by the 2015 10(j) rule is protective of genetic diversity. We expect to adjust the amount of take allowed by the Service and conducted by the Service and our partners, through our management actions as needed, to ensure that adult wolf mortality remains below 25 percent (USFWS 2017a, pp. 20–22). We currently do not consider the level of take expected to occur through the three forms of take that are restricted in this rule to affect population demography (USFWS 2022a, p. 117).

Comment: Much of the rationale in the proposed rule's *Regulatory Flexibility Act* discussion is based on Ramler et al. (2014). This study was a non-random survey of 18 ranches and a correlation to calf weights. The subsequent assumptions in the proposed rule about the number of ranches affected are simple, as noted. The rule also states that effects on livestock production are not significant, and do not need to be addressed when not significant.

Our response: Ramler et. al (2014) found no evidence that wolf packs with home ranges that overlap ranches have any detrimental effects on calf weights. Primary factors that contributed to weight loss were determined to be associated with climate and individual ranch husbandry practices. However, the study did find that for ranches that experienced a confirmed cattle depredation by wolves, calves on average experienced a weight loss of approximately 22 pounds, or 3.5 percent of body weight. Ramler et. al (2014) was one of several studies used to estimate the indirect effects of wolf presence on weight loss due to associated stresses.

Comment: There is mixed evidence in the literature as to how compensation rates should be determined to be most effective at mitigating wildlife-livestock conflicts. Some argue that direct compensation programs may create a moral hazard problem (see *e.g.,* Nyhus et al. 2005), which would imply that 100 percent (or higher) compensation reduces incentives for producers to undertake other risk-reducing management activities; thus, full compensation may lead to more depredations. In contrast, other literature suggests that compensations ratios need to be greater than 1 (*i.e.,* more than 100 percent compensation for confirmed depredations) to fully compensate producers for the economic impacts of wolves, including unconfirmed depredations and the indirect effect of depredations (*e.g.,* Ramler et al. 2014; Steele et al. 2013; Laporte et al. 2010; Sommers et al. 2010; Oakleaf et al. 2003).

Our response: We have followed, and will continue to follow, the available literature on this topic, which we agree suggests that different approaches may be relevant in determining adequate and appropriate depredation compensation and does not reach consensus. Livestock producers in the MWEPA currently have compensation programs available in Arizona and New Mexico, including compensation for confirmed depredations and access to collaborative nonlethal conflict avoidance tools and techniques.

Comment: To estimate the potential value of depredated livestock, the USFWS uses a 10-year weighted average of market values, where weights are determined by the proportion of depredated animals that are calves versus cows and prices per hundredweight (cwt) were based on 500-pound (lb) calves and 1,000-lb cows (USFWS 2021, p. 124). These assumptions result in an expected average value of $1,094.72 per depredated cow/calf based on 2020 dollars. This approach is not inherently flawed—it can provide a reasonable average estimate over long-time horizons—but it oversimplifies the cattle market and the potential economic impacts of a depredation of a specific animal at a specific time and place.

Our response: Our economic analysis presented data on cattle prices since 1996. Over that period, the price for cattle in 2020 dollars (per hundred pounds, or cwt) ranged from a low of $94.92 in 1998, to a high of $169.83 in 2014. The average price during this period was $117.50/cwt compared to the average price over the last 10 years (2010–2019), which we used in our analysis, of $134.45/cwt.

There are many independent factors affecting cattle prices on a yearly basis that lie beyond the control of ranchers. These include supply-side factors such as the quality and quantity of cattle from other areas and demand-side factors related to consumer choices. Independently, ranchers try to raise their optimal herd size based on local factors such as the cost of forage, labor, medical expenses, loan rates, and expected sales price. It is beyond the scope of our study to try and develop a detailed, predictive macroeconomic model of the Arizona/New Mexico cattle industry. Recognizing the numerous factors that can influence prices and quantities, we decided to limit our selection of market prices to only the last 10 years of data because including older data would pick up historical influences on market prices and quantities that more likely than not are not as influential or relevant in today's market. We agree that relying on the last 10 years of data to predict future cattle prices represents a simplified approach, but as noted by our peer reviewer, the approach is not flawed and is reasonable given the limitations.

Comment: The USFWS references the documented indirect effects of predator pressure on livestock weight gain, and explicitly attempts to account for it in their calculation of potential economic impacts. Other indirect effects, however, do not appear to be considered or accounted for. It would, admittedly, be difficult to accurately account for the full range of indirect effects.

Our response: Our economic analysis recognizes that in addition to the direct effects that the presence of wolves can have on cattle stocks (*i.e.,* depredations), there are a number of potential indirect effects on the herds as well. One of these indirect effects, which we specifically attempt to account for in our economic analysis, is the effect of stress on cattle herds foraging within the vicinity of wolves. As our reviewer points out, indirect effects may include weight loss; reduction in conception rates; reduced utilization of available forage; increased risks of injury, illnesses, and diseases; and general effects on manageability. We have attempted to review the existing literature on these factors, and where reasonable data exists, we have attempted to use this information to quantitatively estimate the indirect effects on cattle herds due to the presence of wolves. Specifically, we considered the impact of weight losses on affected herds and how that may impact the profitability of ranching operations. As our peer reviewer notes, it is difficult to model the other specific effects, many of which would also manifest themselves in the form of weight loss, due to a scarcity of applicable studies that attempt to better understand all of these interactive effects that may be caused by the presence of wolves. We believe that by accounting for the indirect effects of potential weight losses, we have realistically captured the most significant financial impact of indirect effects on affected ranches.

Comment: The proposed rule explicitly acknowledges potential management responses, noting that estimated costs are likely an overestimate since proactive and reactive management tools are available to reduce the indirect effects associated with weight loss; however, the costs of said management tools do not appear to be explicitly accounted for within estimates of the economic impact on small enterprises (although some may be offset by federally funded or subsidized programs). Additionally, some existing literature (see *e.g.,* Rashford et al. 2010; Lehmkuhler et al. 2007) has identified a range of potential costs associated with managing livestock in the presence of wolves, including fence maintenance and repair, veterinary costs, reporting/verification costs, and other management adjustments.

Our response: Our economic analysis recognizes the fact that ranch operations within the vicinity of wolves may experience indirect economic effects associated with depredations. We recognize there are several potential categories of indirect economic effects, including stress-related effects of wolf presence on the herd, additional labor time for ranch owners to pursue depredation claims, and the investment in additional range labor time and materials in order to prevent depredations (USFWS 2014, chapter 4, pp. 29–48). The FSEIS attempted to reasonably estimate the financial cost of several of these indirect effects on affected ranches based on the studies available that provided credible research and results that could be incorporated into the analysis. We specifically were able to factor in an estimate for owner-operator labor time associated with processing depredation claims, as well as estimating the financial impact of expected weight losses on a stressed herd.

We were unable to find research that would enable us to also attempt to credibly measure the financial impact associated with undertaking additional measures to prevent depredations. While there are some studies that do recognize these impacts (*e.g.,* Rashford et al. 2010; Lehmkuhler et al. 2007) in association with other indirect impacts (*e.g.,* weight loss) in association with the presence of gray wolves, we were unable to extrapolate any findings that could be credibly applied to our analysis. We note that by explicitly accounting for the financial impact of weight loss of stressed herds that we are, in fact, accounting for some of the interactive costs associated with preventative measures, as such measures would not only serve as a detriment to depredations but also serve to reduce stresses on the herd and any associated weight losses. Relatedly, our Mexican wolf recovery program provides both management and financial assistance to ranchers to minimize potential wolf-cattle conflicts. Our latest Mexican wolf recovery program progress report (number 22, January–December 2019) discusses how the Service engaged in such practices during this period and intends to develop a future database to aid in monitoring and evaluating the effectiveness of such activities (USFWS 2019, pp. 37–39).

Comment: Given there is only one population of Mexican wolves under the Service's control, coupled with the uncertainties associated with alternative population sources, it is unclear how the MWEPA cannot be considered essential.

Our response: Neither section 10(j) of the ESA nor our implementing regulations specify that management control of nonexperimental populations is a factor in determining whether an experimental population is essential.

Comment: The MWEPA holds most of the remaining wild Mexican wolves (more than 90 percent), including several wild-born generations. It is highly likely that new genetic mutations have emerged in the wild, providing an evolutionary avenue for locally adapted Mexican wolves. Those alleles will not be in the captive population or Mexico's population, thus making the MWEPA essential.

Our response: We agree that there is potential for new genetic mutations to have emerged, or to emerge in the future, in the wild that may benefit the adaptive potential of Mexican wolves in the MWEPA. However, this fact alone does not equate to essentiality as defined by statutory language or our regulations.

Comments From Federal Agencies

Comment: The Service should clarify its process to consider whether future range expansion beyond the MWEPA via natural dispersal is appropriate for the Mexican wolf due to the potential effects of climate change, and whether the increase in genetic diversity from the genetic objective is sufficient to provide adaptive capacity against climate change. The Service should consider the updated National Fish, Wildlife and Plants Climate Adaptation Strategy and consider implementing an adaptive approach where clear trends in wolf movements north of I–40 result in consideration of expanded experimental population boundaries.

Our response: The Service's recovery strategy for the Mexican wolf in the revised recovery plan includes discussion of the geographic and genetic representation needed for long-term conservation and recovery of the Mexican wolf. The revised recovery plan builds two evaluation periods into the recovery process to ensure that the plan's strategy continues to be appropriate and effective (USFWS 2017a, p. 26); therefore, although we do not currently consider climate change a threat to the Mexican wolf, we will continue to revisit this issue as we evaluate our recovery strategy in the future. We also refer the commenter to our discussion of climate change related to our strategy for Mexican wolf recovery in our response to public comments on the revised recovery plan (see USFWS 2017c, pp. 12–13).

Comments From States

Comments we received from the States regarding our October 29, 2021, proposal to revise the regulations for the nonessential experimental population of the Mexican wolf in the MWEPA are addressed below. We note that some comments from the States expressed support for various features of the rule, such as the Service's intention to align the 10(j) designation with the revised recovery plan, the Service's current focus on pursuing recovery within the historical range of the Mexican wolf, and the Service's intention to capture and return to the MWEPA or captivity any Mexican wolf that disperses outside of the MWEPA. We do not provide responses to statements that are consistent with our approach. In other instances, we have incorporated information supplied in these comments directly into the rule and similarly do not restate those issues here.

Comment: One State agency requested that we add language to the regulatory text in the rule stating that we have developed a 10(a)(1)(A) permit to allow for specific management activities within and outside of the MWEPA and clarifying that we will capture and return to the MWEPA or place in captivity Mexican wolves that travel outside of the MWEPA.

Our response: We state our intention to manage wolves that disperse beyond the MWEPA through the 10(a)(1)(A) permit in the preamble of the rule (see *Management Restrictions, Protective Measures, and Other Special Management,* above). However, only management activities that take place within the experimental population boundaries are included in the regulatory text of the rule.

Comment: Maintenance of the nonessential experimental population designation is critical to the Service's ability to implement responsive management actions such as cross fostering, translocations, and removals. Maintaining the existing designation is also important for maintaining the trust of the public and other agencies as a precedent for other reintroduction efforts under the ESA's section 10(j).

Our response: The Service acknowledges the importance of maintaining the trust of our partners. An essentiality determination under section 10(j) of the ESA is based on whether the best available information supports that the population is essential to the continued existence of the species. Based on the best available information, we have determined the MWEP to be nonessential. We note that the primary difference between an essential and nonessential experimental population is the requirement to conduct interagency consultation under section 7(a)(2) of the ESA for populations determined to be essential and the potential to designate critical habitat under section 4(b)(2) of the ESA. Regardless of the designation as an essential or nonessential experimental population, members of the experimental population will be treated as a threatened species which allows for developing regulations to allow for responsive and flexible management.

Comment: The final rule should stress that the new population objective is not intended to portray an unlimited number of wolves growing indefinitely, but rather recognizes natural variation around a target population size.

Our response: We discuss our expectations for the future growth of the population in the FSEIS (USFWS 2022a, pp. 24, 28, table 2.1). We have ensured that the preamble of this rule does not suggest that we expect an unlimited number of wolves growing indefinitely in the MWEPA under the revised population objective; we point to our statement in the proposed rule that, under the proposed population objective, we would continue to manage Mexican wolves in the MWEPA to maintain a population average greater than or equal to 320 wolves until delisting occurs (86 FR 59953, October 29, 2021, p. 59959), which remains consistent with the final rule.

Comment: The final rule should include timeframes or guidelines for when the States can request management of Mexican wolves if adverse impacts to ungulates are occurring.

Our response: The final rule provides this information at § 17.84(k)(7)(vi)(E).

Comment: Recent efforts to cross-foster genetically valuable Mexican wolf pups from captivity to the wild are demonstrating that this approach can be successfully used to achieve the proposed genetic objective. It is resulting in improvements in the population's gene diversity, mean kinship, and founder genome equivalents. The Service is on track to achieve the benchmark in the recovery plan for 9 released wolves to survive to breeding age at the 5-year review.

Our response: The Service and our partners have committed significant resources since 2014 to test cross-fostering as a release strategy to improve the genetic health of the MWEPA. We agree that this technique appears to be proving successful and has become a valuable tool to address genetic threats in the MWEPA. As of April 1, 2022, 13 released wolves surviving to breeding age have been counted toward the genetic objective and genetic recovery criterion (USFWS files).

Comment: While the proposed genetic and population objectives are appropriate and necessary for the recovery of the Mexican wolf, they may result in additional hardships for livestock producers. Therefore, a companion provision should be included in the rule to implement an aggressive program to improve the coexistence component of the recovery program.

Our response: The Service acknowledges that the increased number of wolves in the MWEPA could result in impacts to livestock producers and that permit restrictions will decrease the ability of some livestock operators to assist in conflict resolution in certain situations. We will continue to work with our partners and livestock operators to expand and improve our coexistence efforts as an integral part of the recovery program, but we have not added any mandatory coexistence measures to the regulatory text of this rule.

Comments From the Public

Comment: Many commenters stated that a single population of an average of 320 wolves in the MWEPA is insufficient for recovery. Many of these commenters stated that a metapopulation of three populations with 750 to 1,000 wolves is necessary for recovery because multiple interbreeding populations are necessary for resiliency and increasing genetic diversity. Other commenters discussed the concept of ecological effectiveness, recommending a population objective of 500 breeding animals.

Our response: These commenters did not provide new information that the Service has not already considered and responded to in its development of the recovery criteria in the revised recovery plan for the Mexican wolf (USFWS 2017c, pp. 19–20) or the population objective for the MWEPA (85 FR 20967, April 15, 2020; USFWS 2021, pp. 202–206). Therefore, we did not make any changes to this rule in response to these comments.

Comment: Commenters questioned or expressed concern with the recovery strategy to have one population in the MWEPA and one in Mexico, stating that dispersal between the two areas would be infrequent, associated with a high risk of mortality, and dependent on successful navigation of low habitat quality and an impermeable border wall.

Our response: We provide our rationale for the recovery strategy for the Mexican wolf in the revised recovery plan and address issues such as dispersal between Mexican wolf populations in the United States and Mexico. The 2015 10(j) rule revisions included the extension of the experimental population boundaries to the international border with Mexico in recognition that management of dispersing wolves between the two populations would be necessary. We addressed comments about this topic in the DSEIS (USFWS 2021, pp. 199–202) and previously in our response to public comments on the revised recovery plan (USFWS 2017c, p. 18).

Comment: One commenter expressed concern that under the proposed population objective, the requirement of an 8-year average of 320 with the last 3 years stable or increasing could allow for the Service to translocate or remove/take around 150 wolves at some point after the population objective has been reached and exceeded.

Our response: The Service is establishing a population objective in this rule that will result in a robust population that contributes to recovery; we intend to manage the population in accordance with meeting and maintaining this objective.

Comment: A commenter mentioned the proposed rule does not include a human-caused mortality criterion or management actions that will substantively address this issue.

Our response: Human-caused mortality is a broad term that encompasses several forms of mortality for Mexican wolves, including vehicular collision, shooting, trapping, and management removal. This rule maintains multiple provisions from the existing regulations in the 2015 10(j)

rule that address the threat of human-caused mortality, including prohibitions to restrict the take of Mexican wolves (§ 17.84(k)(5)) and limitations on activities that may disturb Mexican wolves and affect their persistence (§ 17.84(k)(8)). In addition, this rule provides new restrictions on three forms of take that could result in human-caused mortality, as well as providing a revised population objective to ensure the population continues to grow as necessary to alleviate demographic threats. In addition, the Service is expanding our efforts to address human-caused mortality in our revisions to the revised recovery plan (USFWS 2022b, pp. 30–33).

Comment: Several commenters noted the delay in receiving compensation for depredations and stated that an increase in the wolf population will make the situation more severe for livestock operators.

Our response: The Service is aware of the delays in receiving compensation in previous years. The Service's Wolf Livestock Loss Demonstration Project Grant Program for eligible States and Tribes has served as the primary funding source for compensation and requires a 50:50 non-Federal match; most delays in receiving compensation have occurred as a result of grant funding and match funding not being available at the same time. The Service has made improvements to the Wolf Livestock Loss Demonstration Project Grant Program and worked with its partners to secure match funding, helping to alleviate this issue.

Comment: One commenter noted that the Service is inconsistent because it says that no unique genes would be lost if released wolves did not survive in the MWEPA, but then it uses genetic importance as a reason not to remove wolves during conflict situations.

Our response: Wolves released to the wild from captivity are considered surplus wolves whose genes are represented by related wolves still held in captivity. Therefore, a released wolf could be replaced with a related surplus wolf from captivity if necessary. However, because we are trying to improve gene diversity in the MWEPA, it is important for released wolves to survive and breed so that genes from captivity that are currently underrepresented in the wild become integrated into a more genetically diverse MWEPA population.

Comment: Multiple commenters questioned whether the Service has objectives related to ensuring specific representation of the three founding lineages of the captive population, such as to achieve 50 percent, 25 percent, and 25 percent, respectively, of the Certified (McBride), Ghost Ranch, and Aragon lineages.

Our response: We currently focus on increasing founder representation rather than lineage representation in the wild; however, we do not have specific objectives related to this metric at the current time.

Comment: Many commenters discussed the basis of the proposed genetic objective to ensure that 90 percent of the genes in the captive population are expressed in the MWEPA population. Several commenters noted that wildlife managers typically set genetic retention goals relative to the current source population. These commenters questioned or critiqued the Service's approach to aim to retain 90 percent of gene diversity at 100 years in the future because the projected diversity in the captive population 100 years in the future is a much lower value. These commenters expressed concern over the already-depleted genetic status of the captive population and the concept of tying the genetic future of the wild populations to the ongoing deterioration of gene diversity in captivity. Another commenter stated that the SSP uses 90 percent gene retention as a standard in conserving some captive populations, but this does not make it a ''community of practice standard'' as claimed in the revised recovery plan nor is it appropriate for the Service to use it as a foundation for recovery criteria.

Our response: We expect to achieve the genetic objective in this rule within 8 years.

We used a metric (*i.e.,* the number of animals that survive to breeding age) as the basis of the revised recovery plan genetic criterion that coupled model performance with performance of the wild populations (Miller 2017, entire) to ensure that a large degree of the gene diversity available in captivity is transferred to the wild population to reduce the likelihood of genetic threats such as inbreeding. We provide our rationale for our objectives and strategy in the revised recovery plan (USFWS 2017a, pp. 13–15, 22–24; USFWS 2017c, pp. 28–29), which formed the basis for the genetic objective in this rule.

Comment: Some of the commenters recommended releasing adult pairs with pups instead of, or in addition to, cross-fostering captive puppies into wild dens because adult wolves could more quickly affect the genetics of the MWEPA and because adult releases have had a higher success rate. Several of these commenters stated that the concept of ''effective migrants'' is a better scientific principle than released wolves surviving to breeding age because it ensures that reproduction of released wolves takes place and that genes from captive wolves are integrated into the population. These commenters stated that the Service's proposal is insufficient scientifically for genetic recovery and should be replaced by actual evidence of increased heterozygosity and increased allelic diversity in the population, validated by monitoring to ensure retention. Commenters stated that the rule should commit to all release strategies to achieve genetic objectives.

Our response: This rule maintains the zone definitions of the 2015 10(j) rule, which allow for the release and translocation of adult and sub-adult wolves or puppies in specific geographic locations within the MWEPA. While we have stated our current preference for cross-fostering puppies compared to releasing adult wolves, this rule does not alter the availability of the release strategies supported by the commenters. We provide our rationale for using ''released wolves surviving to breeding age'' as the metric for the establishment of a genetic objective from the MWEPA in our FSEIS (USFWS 2022a, pp. 11, 24–26) and have previously addressed this in our response to comments on the revised recovery plan (USFWS 2017c, p. 79).

Comment: Commenters recommended that released wolves should be tracked, and that genomic survey and analysis should be used to determine how many released captive wolves have contributed genetically to the wild population and what their actual contribution has been. Commenters also restated the recommendation for a replacement release objective, in which the Service would release captive wolves to make up for wolves lost due to removal or illegal killing.

Our response: We track released wolves using global positioning system (GPS) or radio-collars and provide data on survival and reproduction of released wolves in quarterly and/or annual reports. We establish our expectations for releases and translocations in our annual Initial Release and Translocation Plan and during annual management meetings with the SSP. Both of these processes are reflective of the needs of the population, including awareness of demographic rates, progress toward management objectives, or other special management considerations.

Comment: One commenter recommended that at a minimum, captive releases should result in increasing the level of gene diversity, founder genome equivalents, and mean kinship to a level at least 50 percent

between that expected in the captive population and that expected in the wild population, given no releases, because if achieved, this could relieve some of the deleterious impacts of inbreeding depression in the wild population.

Our response: We will continue to monitor the gene diversity, founder genome equivalents, and mean kinship of the MWEPA, as stated in this rule in response to other comments, to validate that genetic threats are being alleviated over time. There is no definitive standard in the literature upon which to assess the extent to which deleterious impacts of inbreeding depression would be reduced according to the commenter's recommendation, although we recognize it as a protective recommendation that strives to ensure adequate gene diversity in the MWEPA for the long-term health of the population, as consistent with the purpose of our genetic objective.

Comment: One commenter stated that it is unlikely that the pedigree of cross-foster pups released to the wild would closely match the pedigree of the releases simulated by the population viability model used in the revised recovery plan (Miller 2017); therefore, the model results suggesting that 22 released wolves surviving to breeding age is sufficient may not be robust. Other commenters questioned whether cross-foster releases have less genetic impact than adult releases because cross-fostered pups come from the same litter.

Our response: The Miller 2017 population viability model ran 1,000 iterations to explore the range of outcomes possible for each scenario. We agree that any single model run may not accurately represent the same specific wolves that we have released in the MWEPA, but the model results are robust in estimating that 22 released wolves will ensure that approximately 90 percent of the gene diversity available in captivity is represented in the wild because the results stem from averaging the results of many iterations (see Miller 2017, p. 16). We recognize that cross-foster pups come from the same litter and are therefore related, but we do not expect all pups placed in a wild den to survive; that is, we expect pup survival of approximately 50 percent during their first year of life. Therefore, the 22 released wolves surviving to breeding age will come from different litters placed during different cross-fostering events. Regardless, the wolves prioritized for release to the wild are those that have gene diversity that is not represented, or that is underrepresented, in the MWEPA and that will, therefore, be beneficial to release.

Comment: Some commenters questioned whether the SSP can continue to support the number of cross-foster events the Service has conducted in recent years or raised concern that cross-fostering could lead to higher relatedness in the MWEPA if cross-foster puppies continue to come from the same captive pairings each year.

Our response: The Service works with SSP facilities on an annual basis to plan breeding events to support cross-fostering in the MWEPA. The number of breeding events that can be supported across SSP facilities and the relative genetic importance of specific pairings (breeding events) to produce puppies that would provide unique gene diversity to the MWEPA are integral components of our planning. The SSP can continue to provide puppies for cross-fostering based on the number of breeding age animals in the population and the number of facilities available to support breeding events.

Comment: One commenter questioned how it is possible that captive wolves being released could have gene diversity that is not represented in the MWEPA population, given that the Service has been releasing wolves since 1998.

Our response: No new genes have been added to the captive population since the merging of the three founding lineages occurred in the mid-1990s; however, the captive population still contains genes not represented in the MWEPA because wolves with those genes have either not yet been released, have not been integrated into the population due to mortality, or are significantly underrepresented in the MWEPA.

Comment: One commenter stated that the frozen semen bank developed by the SSP contains genetic variation not currently expressed in the wild population. The commenter recognized that it may take several more years to develop artificial insemination procedures from frozen semen but stated that the Service should pursue this strategy in addition to ensuring 22 released wolves survive to breeding age.

Our response: We agree that the frozen semen bank may offer an opportunity to infuse additional gene diversity to the MWEPA. We will continue to explore and support opportunities to test and utilize technological procedures to slow the loss of gene diversity in the captive population and ensure the representation of available diversity in the wild as these procedures become available.

Comment: Genomic survey and analysis in wolves is readily available and inexpensive compared to the overall cost estimated for Mexican wolf recovery. In 2022, the best state-of-the-art scientific information, such as actual genetic variation using genomic survey and analysis, should be used for this important aspect of the recovery plan.

Our response: We agree that genomic survey and analysis techniques are available, may be affordable, and can be further integrated into our ongoing monitoring of the genetic status of the MWEPA population.

Comment: One or more commenters stated that the inbreeding depression documented by Fredrickson et al. (2007) likely still exists in the population, because it would be unlikely for it to disappear without an extreme breeding scheme. A commenter noted that natural selection would be more likely to result in the purging of inbreeding if supplemental feeding were stopped, as supplemental feeding may be improving the survival of inbred litters. This commenter recommended that any future evaluation of the genetic fitness of Mexican wolves contributing to a determination on their recovery must be made in the absence of supplemental feeding for at least five generations (20 years). Another commenter stated that viability estimates for the population from the population viability model (Miller 2017) would likely be different if the effect of inbreeding had been calculated differently for packs that are supplementally fed versus those that are not. This commenter suggested looking at larger, longer-term datasets from other gray wolf populations to inform input parameters related to inbreeding. A commenter stated that supplemental feeding is likely accelerating inbreeding accumulation and the loss of genetic variation in the population.

Our response: As stated in our responses to other comments, we expect to conduct additional analyses related to inbreeding during the recovery process for the Mexican wolf. When we collect that future data set, we can determine the appropriate methods for incorporating data from packs/litters that have been supplementally fed. We expect to decrease the use of supplemental feeding as the population reaches recovery and some management activities are curtailed; this may include assessing genetic health within the context of a different (lesser) supplemental feeding regime such as suggested by the commenter.

Comment: One commenter questioned what will happen if 22 released wolves have not survived to breeding age by

2030, which is the end of the benchmarks proposed by the Service.

Our response: If 22 released wolves have not survived to breeding age by 2030, we will extend the temporary restriction until the genetic objective is reached, using the same annual process that accompanies the benchmarks to evaluate whether permits for take on Federal and non-Federal land will be issued in the year ahead.

Comment: Several commenters noted that very few take permits have been issued to the public. Some commenters made this statement as support that take restrictions are not needed, while others stated that the Service and its partner agencies have been the ones taking Mexican wolves and the proposed revisions to the regulations do not limit this form of killing and removal. One commenter stated that the Service acknowledges in the 2017 biological report (USFWS 2017a) that management removals function as a type of mortality to the population, and therefore the Service needs to address its own level of removal in the 10(j) rule.

Our response: The Service considers it important to retain the ability to remove wolves in specific situations in which nonlethal management actions are ineffective at resolving conflicts. The agency's level of removal is consistent with the recovery needs of the Mexican wolf, as evidenced by the growth of the population for the last 6 years during the implementation of the 2015 10(j) rule.

Comment: One commenter stated that the proposed revised take provisions do not result in significant differences in take compared to the 2015 10(j) rule. One commenter stated that basing the projection on the number of permits that have been issued does not limit what could be issued in the future.

Our response: The Service did not intend for the take provisions in the 2015 10(j) rule to lead to an excessive level of take that would hinder the recovery of the Mexican wolf, nor have we used any take provision excessively since implementation of the 2015 10(j) rule began. However, we recognize that as written in the 2015 10(j) rule, several of the take restrictions provide expanded take flexibility without ensuring commensurate progress toward recovery. To analyze the possible effects of the take provisions on Federal and non-Federal land, we extrapolated the number of permits that may be issued in the future based on our current level of permit issuance (USFWS 2022, pp. 28–29, table 2.1). We agree that based on this approach, there are not large differences in take compared to the 2015 10(j) rule, and that it would be possible to issue many more permits than our projections estimate. The potential for issuance of a large number of permits emphasizes that without limiting or restricting the take provisions, this rule may not support the long-term conservation and recovery of the Mexican wolf. By temporarily restricting three take provisions during a critical period of recovery, as we do in this rule, we ensure that genetic threats to the Mexican wolf are rapidly lessened and alleviated.

Comment: One commenter questioned what the incentive is for Service staff to achieve the benchmarks, since not meeting the benchmarks will continue to result in restricted take.

Our response: The Service considers the permits to be a form of management flexibility to address conflict situations across the MWEPA, in particular as the wolf population grows and the number of conflicts increases. Therefore, the Service would utilize the permits when doing so will be appropriate in the context of the long-term conservation and recovery of the Mexican wolf; in other words, the incentive for Service staff to achieve the benchmarks is to reach recovery targets and to increase our management flexibility to address conflicts.

Comment: A number of commenters stated that the Service and State agencies should ban coyote hunting in the MWEPA due to the loophole provided by the McKittrick policy for people who shoot wolves claiming they thought they were coyotes.

Our response: Regulating coyote hunting is beyond the scope of these revisions that the Service is taking to comply with the March 31, 2018, order.

Comment: Several commenters recommended that the Service should not remove wolves for natural predation on wild ungulates. These commenters recommended the Service remove the take provision for unacceptable impact to a wild ungulate herd. In contrast, other commenters questioned whether the Service has any mechanisms to address drastic declines in elk herds during the (estimated) 6 years in which State game and fish agencies would not be able to request take in response to an unacceptable impact to a wild ungulate herd. One of these commenters stated that the level of wolf removal that may be needed after the period of restriction is likely to be much more severe than without the restriction. Several other commenters questioned why we would need to limit the State game and fish agencies from requesting to utilize the unacceptable impact take provision if translocation of wolves is an option, or why the restriction is necessary at all given the strict process by which the Service would approve any requests made by the States. This commenter clarified that the Service's statement that we would not know how much take would occur is false, because the Service would have to approve the take.

Our response: Mexican wolf predation on wild ungulates occurs as a normal part of Mexican wolf ecology. We recognize that in infrequent situations, predation could result in a drastic decline in a localized wild ungulate herd, and that this may be a management concern for the State game and fish agencies and hunting and guiding businesses in the MWEPA. The take provision for take in response to an unacceptable impact to a wild ungulate herd addresses these infrequent situations, rather than the ongoing, natural background level of predation that occurs from the presence of Mexican wolves across the landscape. Therefore, we consider this take provision to be a reasonable component of our management in the MWEPA, and consistent with the recovery of the Mexican wolf. Our temporary restriction of this take provision ensures that the gene diversity of the MWEPA population improves sufficiently to decrease gene threats prior to allowing for the removal of wolves in response to an unacceptable impact to a wild ungulate herd. As we explain in the FSEIS (USFWS 2022, pp. 111–116), we do not expect wolf density to reach a level where unacceptable impacts occur during the period of restriction. However, the restriction of take provisions motivates the Service and our partners to accomplish the genetic objective as quickly as possible, which will benefit the recovery of the Mexican wolf. Therefore, if drastic declines were to begin to be observed, efforts to release more wolves could shorten the period of restriction. While we understand the commenters' statement that the Service would approve future take requests under this take provision and would therefore know how many wolves would be taken, we meant that because we have not used this provision and do not know the circumstances of future requests, it is difficult at this time to estimate the level of take of released wolves that could occur through this provision. After the genetic objective is achieved and the period of restriction ends, the take of released wolves will not hinder the genetic health of the MWEPA because released wolves will no longer represent unique gene diversity, as described elsewhere in this rule.

Comment: Commenters expressed concern about the Service's proposal to

restrict take provisions because take provisions promote management flexibility and coexistence between wolves and local residents. These commenters pointed out that the MWEPA is a working landscape where wolves should be managed in a manner that is compatible with other uses, such as livestock operations. These commenters stated that without take authority, livestock operators will not be able to protect themselves from direct economic impacts. Several commenters suggested that at specific population sizes (*e.g.,* more than 320 wolves) any ongoing restriction of take provisions should be removed to ensure that wolves do not cause additional impact and harm.

Our response: The Service strives to balance the recovery needs of the Mexican wolf with the needs and concerns of local communities, including livestock operators. The take restrictions in this rule were developed to ensure that progress toward recovery dictates the availability of management flexibility such as the issuance of permits to livestock operators, while also ensuring that the Service and our partners maintain the ability to address conflict situations. During the period of restriction, the Service and our partners will work with livestock operators to utilize nonlethal management response to conflict situations, or, in the event that nonlethal measures are ineffective, may remove a wolf or wolves to resolve the situation. These management approaches will continue, regardless of population size, until the genetic objective is reached. In addition, during the period of restriction, domestic animal owners on non-Federal land will maintain the ability to take a wolf that is in the act of biting, killing, or wounding a domestic animal at the time of take.

Comment: Some commenters stated that ranchers in the MWEPA no longer attempt to obtain a permit for take of Mexican wolves on Federal or non-Federal land because the Service requirements for issuance are so stringent and delayed that, even if granted, wolves have already inflicted damage. The commenter stated that livestock operators and local citizens believe no permits will be issued, making the take permit on non-Federal land as currently managed a meaningless management tool for depredating wolves. This commenter requested that the Service assign additional staff to facilitate and deliver permits.

Our response: The Service will work towards improving the timing of the issuance of permits. However, permits can only be issued in conjunction with removal actions and are by definition a response to inflicted damage by wolves that has already occurred.

Comment: Commenters stated that the rule must address all forms of take to ensure the rule will protect the genetic diversity of the Mexican wolf; one commenter recommended the Service initiate a process to account for the genetic value of every wolf being considered for removal. Another commenter stated that the Service's approach assumes that only wolves released after 2016 are genetically valuable, which the commenter states is not true.

Our response: The establishment of the genetic objective provides an overarching strategy to improve the gene diversity of the MWEPA and engages all management actions in the pursuit of achieving the objective. Per the March 31, 2018, order, we specifically focus on restricting three forms of take that were expanded in the 2015 10(j) rule. We incorporate benchmarks for two of these take provisions that connect the issuance of permits (*i.e.,* management flexibility) to the number of released wolves surviving to breeding age; these benchmarks motivate the Service and our partners to release wolves and to utilize nonlethal methods to manage conflicts so that released wolves that could count toward the genetic objective may not be taken during the course of management activities. The genetic objective we are establishing serves as an indicator that we have transferred a large degree of the gene diversity available in captivity to the wild population. We do not intend to suggest that wild wolves may not have valuable gene diversity. However, because we are trying to improve gene diversity in the MWEPA, it is important for released wolves to survive and breed so that genes from captivity that are currently underrepresented in the wild become integrated into a more genetically diverse MWEPA population. The Service and designated agencies currently evaluate the genetic value of every wolf being considered for removal within the context of other management considerations such as the level of conflict occurring and the range of conflict response measures available.

Comment: Several commenters questioned how the Service will verify whether a wolf taken with a permit in the previous year was a released wolf.

Our response: We intend to collar released wolves to assist in our ability to determine whether a wolf taken with a permit was a released wolf. Because cross-fostered pups are too small to be fitted with collars, we microchip pups and obtain genetic markers through blood samples to identify individuals. At 1 year of age, pups are nearly the size of adults and can be fitted with collars. In any case, because we take blood samples from released wolves prior to release, we will be able to determine the identify of a wolf taken with a permit through its microchip or subsequent blood or scat samples.

Comment: Several commenters recommended that the proposed restriction of take provisions be made permanent rather than temporary in order to ensure that take does not negatively affect Mexican wolf recovery. One commenter stated that by making the restrictions temporary, the rule will only serve short-term conservation needs of the Mexican wolf and, therefore, falls into the same error as the 2015 10(j) rule. This commenter recommended implementing a monitoring protocol that would require the restrictive provisions be put into place again if the genetic health of the population declines in the future.

Our response: As described throughout this rule, this rule aligns the nonessential experimental population designation with the recovery strategy and criteria outlined in the revised recovery plan for the Mexican wolf, and therefore contributes to the long-term conservation and recovery of the Mexican wolf. We consider temporary restriction of the take provisions appropriate during the period in which we are focused on achieving the genetic objective because this is when the release of captive wolves will have the most positive contribution to the MWEPA in lessening the risk of genetic threats. After we have integrated a large degree of the gene diversity available from captivity into the wild, the gene diversity of captive wolves will not be as significant; in other words, it will already be represented in the wild. Therefore, restricting the take provisions after the genetic objective is met will not have the protective effect that it will have prior to achieving the genetic objective.

Comment: Numerous commenters referenced scientific literature related to the relationship between poaching (illegal killing) and the level of legal protection afforded to wolves (*e.g.,* Louchouarn et al. 2021). These commenters stated that the scientific literature makes clear that illegal killing of wolves increases when protections for wolves are lessened and that nonlethal methods to address conflict are effective when properly implemented. These commenters stated that Service policies to liberalize take permits will incentivize and encourage

poaching, and therefore recommended that the Service permanently suspend the use of any type of take permit or restrict all forms of take significantly. Many of these commenters recognized that the Service currently uses nonlethal methods to address conflict in some situations and recommended that the Service increase its focus on nonlethal methods to reduce and address conflicts by adding language to the rule in support of, or to mandate, nonlethal methods of management. Several commenters specified that instead of the Service expecting livestock owners to assist with management actions in the future, the Service should use its resources to expand the use and training of nonlethal methods with livestock operators. In contrast, several commenters noted that some nonlethal measures cause unexpected consequences or are impractical, citing examples that range riders push wolves onto a ranchers' neighbors and that it is impractical to expect ranchers to install fladry (a rope mounted along the top of a fence, from which are suspended strips of fabric or colored flags, that will flap in a breeze) across tens of miles of fencing.

Our response: The effectiveness of nonlethal deterrents is dependent on various characteristics of the area and individual livestock operations. For instance, many tools (fladry, radio-activated guard boxes, and electric fencing) are only effective in small areas. The southwestern U.S. differs from other geographic areas where much of the scientific literature has been developed in several aspects that are relevant to the efficacy and logistical feasibility of nonlethal tools, such as: (1) Calving pastures that are hundreds of square miles versus less than 2 square miles, (2) reduced stocking rates that are reflective of reduced feed and water in localized areas, and (3) year-round calving rather than seasonal calving. Many nonlethal tools that may be effective in other areas may not be as effective or logistically feasible in the MWEPA. Nevertheless, some innovative tools (diversionary feeding, range riding, hazing) have reduced depredations in the MWEPA in certain situations. The Service will continue to focus on, and expand, the use of nonlethal tools where appropriate and utilize removal as a last resort to prevent depredations. Further, this rule is more restrictive relative to take than the 2015 10(j) rule. Based on the hypothesis referenced by commenters of an inverse relationship between illegal killing and the level of protection afforded to wolves, the prediction would be for this rule to result in reduced illegal killing relative to the previous time period. We note that this conclusion is far from a consensus in the literature.

Comment: Commenters suggested that the loss of newly released wolves outside of the area previously designated as the Blue Range Wolf Recovery Area (BRWRA) in the original 10(j) rule for the MWEPA (63 FR 1752; January 12, 1998) would not appreciably reduce the likelihood of the species' survival because it would have no effect on the survival of the previously established wolf population.

Our response: We consider all Mexican wolves in the MWEPA to function as a single population regardless of their current location compared to the previous geographic area designated as the BRWRA; therefore, our essentiality determination is based on the MWEPA as a whole, rather than solely the area beyond the boundaries of the previously designated BRWRA that became allowable for wolf occupancy under the 2015 10(j) rule.

Comment: Several commenters expressed support for an essential determination because they claimed that an essential designation would reduce illegal take or better support the SSP in providing genetic diversity for Mexican wolves in the wild.

Our response: A determination of essential would result in several changes to the experimental population, including conducting interagency consultation under section 7(a)(2) of the ESA and the potential to designate critical habitat under section 4(b)(2) of the ESA. Neither of these provisions would directly impact the level of illegal take occurring or the function or ability of the SSP to support the reintroduction of the Mexican wolf to the wild.

Comment: Many commenters stated that an essential designation would better support recovery due to the section 7 consultation requirements and the potential to designate critical habitat for the Mexican wolf.

Our response: An essentiality determination under section 10(j) of the ESA is based on whether the best available information supports that the population is essential to the continued existence of the species, not whether the consultation or critical habitat requirements of the ESA resulting from an essential determination would have a conservation benefit to the subspecies' recovery.

Comment: Several commenters stated that if we lose the wild population, we lose several decades representing multiple generations of adaptive evolution, and this supports an essential designation.

Our response: The ESA does not specify that maintenance of adaptive evolution is a factor in an essentiality determination. We agree that if we lost the MWEPA population we may lose some local adaptations in that process; however, we consider the ability to restart a population using captive wolves as a determining factor in our decision because wolves from the captive population are still able to provide gene diversity sufficient for reintroduction.

Comment: Commenters expressed concern that Mexican wolves should be designated as essential because the population in Mexico is not big enough or genetically diverse enough to promote the recovery of the species.

Our response: We recognize that further alleviation of demographic and genetic threats is necessary for the population in Mexico to achieve recovery objectives. However, Mexico has released and managed Mexican wolves in the wild for more than a decade, demonstrating a consistent effort to establish a population for recovery. Because we consider the wolves in Mexico to function as a population, and due to Mexico's concerted and ongoing efforts to increase the abundance and distribution of the population, we consider it a valid population to consider in the context of our essentiality determination.

Comment: One commenter recommended that the Service should provide examples of a 10(j) population that has been designated as essential for comparison's sake and to show the agency's factual bar for an essential determination.

Our response: The Service has never designated a 10(j) population of any species as essential; therefore, we are unable to provide the example requested by the commenter. In fact, Congress' expectation was that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34). The preamble to our August 27, 1984, final rule reflects this understanding, stating that an essential population will be a special case and not the general rule (49 FR 33885, August 27, 1984, p. 49 FR 33888). We consider each essentiality determination on a case-by-case basis due to the varying circumstances and life history of the species. As we explain in our determination in this rule, the existence of a robust captive population and another wild population of Mexican wolves are central factors in our determination.

Comment: Some commenters expressed concern that continued Mexican wolf generations in captivity may result in evolutionary maladaptation to the captive environment (*e.g.,* see Frankham 2008).

Our response: We will continue to evaluate the suitability of captive wolves prior to their release to the wild. SSP facilities adhere to strict husbandry protocols to minimize the likelihood of maladaptive behaviors.

Comment: One commenter stated that based on the size of the MWEPA population and the number of breeding wolves in the captive population it would be untenable to replace the MWEPA population because over 90 percent of the captive breeding-age wolves would need to be released.

Our response: We would not expect to restart a wild population in the MWEPA that would immediately obtain the current size of the MWEPA population (close to 200 wolves). We explain our approach to restarting a population in the MWEPA in this rule (see above under *Is the experimental population essential to the continued existence of the species in the wild?*)

Comment: The Service received published scientific papers and gray literature (reports) during the public comment period related to the following topics: population viability analysis, Mexican wolf genetics, the impact of lethal management on illegal killing, large carnivore poaching, livestock predation, population estimation analysis, predator tolerance/control, science and policy, large carnivore management, research and independent/peer review transparency, improving the framework of the ESA, threats to biodiversity and binational conservation, the Mexican wolf's geographic range, metapopulation connectivity, the vulnerability of the Mexican wolf to climate change, and wolf conservation planning.

Our response: We have reviewed and incorporated this information into this final rule where applicable.

Comment: A number of commenters raised concern that the Service is aligning the 10(j) rule with the recovery plan. Commenters stated that the Federal court prohibits aligning the 10(j) rule with the recovery plan. Commenters are also concerned that aligning the 10(j) rule with the recovery plan does not promote recovery since recovery plans are discretionary and not mandatory. Some commenters expressed concern that tying the new rule to the recovery plan is unnecessarily making the rule vulnerable. Specifically, commenters referenced the judge's statement that the rule must be flexible enough to remain valid through changing conditions and future revisions for recovery plans. Commenters also raised concern over the court-ordered revision of the recovery plan due in October 2022, and the 5-year status review scheduled for 2022–2023, which they stated could result in changes to the recovery plan, which they claim would render this new rule invalid or subject to further litigation. Other commenters expressed that given the significant scientific flaws in the recovery plan, the Service is violating the court's order and the ESA's best available science mandate by aligning the revised rule to the recovery plan.

Our response: See our discussion, above, in Rationale for Revisions to the Experimental Population Designation in Relation to Recovery. While implementation of recovery plans is discretionary and no partner is required to implement a recovery plan, the Act requires the Service to develop recovery plans for the conservation and survival of listed species. Such plans must include criteria which, when met, would result in a determination that the species be removed from listed status (*i.e.,* that the species is recovered). Because we must also determine that our experimental population designations will further the conservation of the species, it is appropriate for us to align our 10(j) rule with the recovery plan developed for the conservation of the species. As noted above in *Review and Evaluation of the MWEPA Population,* multiple reviews are built into our processes in acknowledgement that conditions may change and necessitate adjustments.

Comment: One commenter stated that the judge told the Service that it could not depend on another population when ensuring that the MWEPA population furthers the conservation of the Mexican wolf, yet the MWEPA population and genetic objectives are dependent on Mexico achieving its recovery goals.

Our response: This final rule revises several features of the MWEPA designation to ensure that the MWEPA supports the Service's recovery strategy for the Mexican wolf as laid out in the revised recovery plan (USFWS 2017b, pp. 10–17). Specifically, the population objective and genetic objective in this final rule ensure that the MWEPA population is robust and free from demographic and genetic threats. In other words, the MWEPA population must function as an independent, robust, healthy population in order to contribute to recovery, but it is not the only population necessary for recovery.

Comment: Some commenters raised issues with the consultation that was conducted on the 2015 10(j) rule under section 7 of the ESA. One commenter stated that there were severe deficiencies in the consultation process for the 2015 rule and the Service needs to conduct a new consultation on the new rule and associated section 10(a)(1)(A) permit; another commenter stated that the proposed revision provides no indication that the Service initiated or completed intra-agency consultation on the revised 10(j) rule.

Our response: As part of the Service's action to revise the experimental population designation of the Mexican wolf in the MWEPA, we have conducted section 7 consultation.

Comment: Some commenters expressed concern over trapping of Mexican wolves. One commenter stated that the provisions in 50 CFR 17.84(k) that relate to trapping must be modified in recognition that, except for a few specific exceptions, trapping on public lands in New Mexico is now illegal. Another commenter stated that private wolf trapping or snaring should be a violation of the 10(j) rule and the FSEIS must consider the effects of trapping on Mexican wolves. Other commenters expressed concern about the impact of New Mexico's trapping regulation on the ability of the Service to manage wolves.

Our response: Our regulations at § 17.84(k)(5)(iii) and (k)(7)(iv) provide the regulatory prohibitions and exceptions to those prohibitions for taking a Mexican wolf with a trap, snare, or other type of capture device in the MWEPA, including our due care provisions at § 17.84(k)(5)(iii)(A), which state that due care includes following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or Tribal trust lands where the trapping takes place.

Comment: Several commenters expressed confusion over whether the numbering in the regulatory text of the October 29, 2021, proposed rule would negate provisions with the same numbering from the 2015 10(j) rule.

Our response: We are not eliminating any of the regulations established by the 2015 10(j) rule other than those that are revised by this final rule. We have ensured that the revisions and additions to the regulatory text of § 17.84(k) in this rule do not erroneously negate any of the regulations established by the 2015 10(j) rule.

Comment: Many commenters mentioned geographic issues related to the MWEPA, primarily in support of geographic expansion of the MWEPA beyond the current MWEPA boundaries,

especially the I–40 boundary. These commenters offered many reasons for geographic expansion, such as population resiliency and redundancy, including a metapopulation configuration for recovery; adaption to climate change; habitat availability; and issues related to depicting historical range based on mitochondrial DNA rather than previous morphological data.

Our response: We explained during scoping that we would not revise the geographic boundaries of the MWEPA during the revision of the 2015 10(j) rule. Our focus in this rule is to comply with the March 31, 2018, order. We responded to public comments about geographic issues in our response to scoping comments (USFWS 2022a, pp. 201–205) and previously in our response to comments on the revised recovery plan (USFWS 2017c, pp. 8–18).

Comment: Several commenters stated that the revised rule must ensure the conservation of the Mexican wolf's ecosystems; this should be done based on an analysis of the Mexican wolf's historical range, the subspecies' genetic status, the size of the population, and the area that will be required to support it in order to ensure future viability and recovery. After identifying the Mexican wolf's ecosystems, commenters recommended the Service must then consider important features to conserve in those ecosystems.

Our response: This rule clearly explains the contribution of the experimental population to the recovery of the Mexican wolf. For a broader discussion of Mexican wolf recovery, including historical range, genetics, population viability, habitat suitability, and other aspects of ecosystem conservation as mentioned by the commenter, we refer the commenter to the revised recovery plan and to the related biological report and its appendices (USFWS 2017a, entire; USFWS 2017b, entire).

Comment: Several commenters expressed disagreement with the findings of the Service's takings analysis, stating that destruction of livestock by Mexican wolves is a taking by the Federal Government.

Our response: Damage to private property caused by protected wildlife does not constitute a ''taking'' of that property by a Federal agency that protects or reintroduces that wildlife.

Summary of Changes From the October 29, 2021, Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf

In this rule, we:

- Revise the wording of the population objective in response to peer review of the October 29, 2021, proposed rule (86 FR 59953) to clarify our methodology to verify a stable or increasing population over an 8-year period. This clarification is set forth under Regulation Promulgation, below.
- Revise and restructure our essentiality determination from the October 29, 2021, proposed rule (86 FR 59953) to clarify the information and rationale used in our determination. The essentiality determination in this rule is provided above under *Is the experimental population essential to the continued existence of the species in the wild?*

Required Determinations

Regulatory Planning and Review—Executive Order 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the Regulatory Flexibility Act and to require the preparation of a regulatory flexibility analysis. If a substantial number of small entities are affected by the rule, but the per-entity economic impact is not significant, the USFWS may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the USFWS may also certify.

In our 2015 10(j) rule, we found that the experimental population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 2015 10(j) rule expanded the geographic boundaries of the MWEPA, established new management zones with provisions for initial release and

translocation of Mexican wolves, revised and added allowable forms of take, and clarified definitions. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (80 FR 2512, January 16, 2015, pp. 2553–2556).

Under this rule, we modify the population objective, establish a genetic objective, and temporarily restrict three of the forms of take of Mexican wolves in the MWEPA that we adopted in the January 16, 2015, final 10(j) rule (80 FR 2512). We are making these revisions to ensure the experimental population contributes to the long-term conservation and recovery of the Mexican wolf. In addition, we are maintaining the nonessential designation for the experimental population.

Because of the regulatory flexibility for Federal agency actions provided by the MWEPA's 10(j) designation, we continue to expect this rule not to have significant effects on any activities within Federal, State, or private lands within the experimental population. In regard to section 7(a)(2) of the ESA, except on National Park Service and National Wildlife Refuge System lands, the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the ESA requires Federal agencies to confer (rather than consult) with the USFWS on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing is unlikely to be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) of the ESA requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species within the experimental population area. As a result, and in accordance with these regulations, some modifications to the Federal actions within the experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

This rule will result in a larger population of Mexican wolves occupying the MWEPA over the timeframe of recovery than the 2015 10(j) rule, which has the potential to affect a greater number of small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111), sheep farming (business activity code NAICS 112410), and outfitters and guides (business activity code NAICS 114210). Small entities in these sectors may be affected by Mexican wolves depredating on, or causing weight loss of, domestic animals (particularly beef cattle), or preying on wild native ungulates, respectively. We have assessed impacts to small entities in the FSEIS.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals, particularly beef cattle. Direct effects to small businesses could include foregone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd, and weight loss of livestock when wolves are present. Ranchers have also expressed concern that a persistent presence of wolves may negatively impact their property and business values. We do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector based on the information provided below.

The small size standard for beef cattle ranching entities and sheep farms as defined by the Small Business Administration are those entities with less than $1.0 million in average annual receipts (*http://www.sba.gov/content/summary-size-standards-industry-sector*). We consider close to 100 percent of the cattle ranches and sheep farms in Arizona and New Mexico to be small entities. The 2017 Census of Agriculture reports that there were 7,057 cattle and calf operations and 7,509 sheep farms in Arizona, and 10,880 cattle and calf operations and 4,047 sheep farms in New Mexico.

Of the approximately 18,000 cattle ranches in Arizona and New Mexico, 12,334 occur in counties in the MWEPA (USDA 2017). These operations account for approximately 69 percent of the total for both States. The actual number of ranches within the project area is far less than this estimate because several counties extend beyond the borders of the project area, or the ranches occur in areas where we do not expect wolf occupancy due to low habitat suitability. The Agricultural Census does not report sub-county farms or inventory, so we rely on the county numbers as the best available data for estimating the number of potentially affected small ranching operations.

Cattle ranches vary significantly in herd size, with classifications ranging from a herd of 1 to 9 animals, to those with more than 2,500 animals (2017 Census of Agriculture). Over 80 percent of these ranches have fewer than 50 head of cattle.

We assessed whether a substantial number of entities will be impacted by the regulatory revisions for the MWEPA by estimating the annual number of depredations we expect to occur within the project area when the Mexican wolf population reaches its population objective of an average of 320 wolves. We reported in the October 29, 2021, proposed rule (86 FR 59953) that between 1998 and 2019, on average, there were 151 total depredations (confirmed and unconfirmed) by Mexican wolves in any given year, which equates to 1.7 cow/calves killed for every Mexican wolf. Based on this, we estimated the average number of cattle killed (both confirmed and unconfirmed) in any given year for 320 wolves would be 544 individuals (86 FR 59953, October 29, 2021, p. 59972). We expect the experimental population to grow from its current minimum population estimate of 186 wolves to an 8-year average population of 320 wolves. Assuming that one cow is depredated per ranch, we stated in the October 29, 2021, proposed rule that we expected the number of affected ranches to increase from 151 ranches to 544 ranches when the wolf population reaches 320 individuals. At this point, if each expected depredation affects a unique ranch, then a total of approximately 4 percent of ranches in the area would be impacted. With the addition of more recently available data (wolf population and confirmed depredations in 2020 and 2021), for this final rule, we expect the average number of cattle killed (both confirmed and unconfirmed) in any given year for 320 wolves will be 607 individuals (USFWS files), affecting up to 607 individual ranches.

To the extent that some cattle ranches will most likely not be impacted by wolf recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected ranches because the Agricultural Census

does not provide data at a sub-county level, this estimate could understate the percentage of ranches potentially affected. However, for other reasons, this estimate could very well overstate the percentage of cattle ranches affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the ranches operating in occupied wolf range. Rather, wolves seem to concentrate in particular areas, and to the extent that livestock are targeted by the pack for depredations, some ranch operations will be disproportionately affected. Therefore, it is more likely that fewer than 607 ranches may experience more than one depredation, rather than each of 607 ranches experiencing one depredation.

Compared to the 2017 total inventory of estimated ranch cattle (259,192) for the project area of the Blue Range Wolf Recovery Area (BRWRA), both confirmed and unconfirmed depredations per 100 Mexican wolves account for 0.2 percent of the herd size. The economic cost of Mexican wolf depredations in this time period has been a small percentage of the total value of the livestock operations. With a population objective of an average of 320 Mexican wolves in the MWEPA, the expected value of 607 cattle (189 cattle killed per 100 Mexican wolves on average for any year) at auction based on a weighted average market value for a depredated cow/calf of $1,094.72 ($2020), the total annual impact would be $664,495. If depredations uniquely affect a separate operation, then a total of 607 operations would incur an expected corresponding loss of $1,095.

Small businesses involved in ranching and livestock production could also be indirectly affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off suitable grazing habitat or away from water sources. Livestock may try to protect themselves by staying close together in protected areas where they are more easily able to see approaching wolves and defend themselves and their calves. A consequence of such a behavioral change would likely be weight loss, especially if the wolves are allowed to persist in the area for a significant amount of time because the cattle would be afraid to spread out to find more lucrative forage areas. Weight loss could also occur if the presence of wolves causes the herd to move around more rapidly as they try to keep away from wolves. Based on Ramler et al. 2014, weight loss of cattle is associated with the ranches that have suffered depredations. Therefore, we would expect the same ranches—that is, 607 ranches or fewer—that are impacted by depredations to potentially be impacted by weight loss of their cattle. Because wolves' tendency to prey on cattle is localized, we do not expect all 607 ranches and their associated herds to be impacted.

Using a mid-point estimate of 6 percent weight loss for calves at the time of auction, we calculated the impact on 2019 model ranches assuming that wolf presence pressures persisted throughout the foraging year. Based on mean market prices, a 6 percent weight loss for the herd at the time of sale could result in a profit loss of $3,079 to $16,613, depending on the size of the ranch. Under such a scenario, an affected ranch could incur a 20 percent loss in profit using the model ranch assumptions discussed in the report. This, however, is likely an overestimate of impacts that would occur, as once wolves are detected in an area, a variety of proactive and reactive management tools are available to the landowner or the USFWS and our designated agencies such that wolf presence would not persist throughout a foraging year.

This final rule is based on alternative one in our FSEIS. Under this alternative, the experimental population regulations continue to offer several provisions for harassment and take of Mexican wolves on Federal and non-Federal land to address conflict situations between wolves and livestock, although we are temporarily restricting two of these until we reach the genetic objective of 22 released wolves surviving to breeding age. The MWEPA regulations continue to provide for the initial release of captive wolves into suitable habitat in Zones 1 and 2, and we have demonstrated our intention to reduce nuisance behavior associated with adult releases by using the cross-fostering technique. Further, depredation compensation programs are available to offset some of the economic impacts of livestock depredations; these payments fully offset the impacts of confirmed depredations for some operators but do not fully offset impacts for all operators, such as those who experience unconfirmed losses for which payment is not provided.

Based on the preceding information, we find that the impact of direct and indirect effects of Mexican wolf depredations on livestock is not significant and substantial. That is, if impacts are evenly spread, less than 5 percent of small ranches in the MWEPA will be impacted, which we do not consider to be a substantial number. If impacts are disproportionately felt (several ranchers bear the burden of the depredations), the number of affected ranches will be even less (not substantial), but the impact to those affected may be significant depending on the number of cattle on the ranch and other characteristics.

Our revision of the experimental designation may also impact small business entities associated with big game hunting, due to wolves' predation on wild ungulates, specifically elk, in the MWEPA. Effects to small businesses in this sector could occur from impacts to big game populations, loss of hunter visitation, or a decline in hunter success, leading to lost income or increased costs to guides and outfitters. We would expect impacts to big game hunting to potentially occur from the increased number of wolves in the MWEPA or from the temporary restriction of the provision for take in response to an unacceptable impact to a wild ungulate herd. Negative impacts to the big game hunting economic sector would be most likely to occur during the period that this take provision is restricted because State agencies will not be able to request the removal of wolves if they are causing ungulate herds to fall below management goals (*i.e.,* an unacceptable impact).

As we describe in the FSEIS, we do not have a high degree of certainty as to when impacts to ungulates may occur, but we speculate based on information from gray wolves in other geographic areas that impacts will not occur prior to the wolf-to-1,000-elk ratio reaching above 4 wolves to 1,000 elk (potentially around 2024 or after). We expect to meet our genetic objective by 2030, resulting in the temporary restriction of this take provision for not more than 6 years. After the genetic objective is reached and the restriction on this take provision is lifted, the States could request the removal of wolves causing unacceptable impacts, which would result in mitigation of any reduction in hunting revenue occurring in that area. Currently, we (the Service and the State game and fish agencies) do not have information suggesting that impacts have occurred. No observable impact on wild ungulates due to wolves has been documented, nor reductions in big game hunting. In Arizona, total harvest of elk and percent success of hunters increased from 2012 to 2017 (the most recent year for which we have data) (AZGFD 2011, 2017) and stayed stable or increased slightly in New Mexico from 2012 to 2019 (NMDGF files).

For the above reasons and based on currently available information, we certify that the revision to the existing

nonessential experimental population designation of the Mexican wolf will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule will not ''significantly or uniquely'' affect small governments because it will not place additional requirements on any city, county, or other local municipalities. We have determined that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. Therefore, a small government agency plan is not required.

(2) This rule is not a ''significant regulation action'' under this act; it will not produce a Federal mandate of $100 million or greater in any year. The regulatory revisions to the MWEPA will not impose any additional management or protection requirements on the States or other entities.

Takings—Executive Order 12630 (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the ESA's regulatory requirements regarding the reestablished listed species within the experimental population are significantly reduced. In the 1998 final rule (63 FR 1752; January 12, 1998), we stated that one issue of concern is the depredation of livestock by reintroduced Mexican wolves, but such depredation by a wild animal would not be a taking under the 5th Amendment. One of the reasons for the experimental population is to allow the agency and private entities flexibility in managing Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

A takings implication assessment is not required because this rule will not effectively compel a property owner to suffer a physical invasion of property and will not deny all economically beneficial or productive use of the land or aquatic resources. Damage to private property caused by protected wildlife does not constitute a taking of that property by a government agency that protects or reintroduces that wildlife. This rule will substantially advance a legitimate government interest (conservation and recovery of a listed species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132 (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this rule has significant federalism effects and have determined that a federalism summary impact statement is not required. This 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. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in New Mexico and Arizona. Achieving the population objective for the MWEPA, which serves as one of the recovery criteria for the Mexican wolf, will contribute to the rangewide recovery of the species, which will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially or directly affected. This rule will operate to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant federalism effects or implications to warrant a federalism assessment under the provisions of E.O. 13132.

Civil Justice Reform—Executive Order 12988 (E.O. 12988)

In accordance with E.O. 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the E.O.

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with permitting and reporting requirements associated with native endangered and threatened species, and experimental populations, and assigned the following OMB control numbers:

- 1018–0094, ''Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR 10, 13, and 17'' (expires 01/31/2024), and
- 1018–0095, ''Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84'' (expires 9/30/2023).

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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relatives 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 have considered possible effects of the revisions in this rule on federally recognized Indian Tribes. Our revisions do not include a revision to the geographic boundaries of the MWEPA, and we continue to recognize that the MWEPA overlaps with or is adjacent to Tribal lands. We notified the Native American Tribes within and adjacent to the MWEPA about this rule and invited eight Indian Tribes to serve as cooperating agencies in the development of the DSEIS. We communicated with all Indian Tribes in Arizona and New Mexico, as well as Tribes outside of Arizona and New Mexico that may have interest in land within the MWEPA, through written contact, including informational mailings from the USFWS and email notifications to attend video and teleconference informational sessions and public hearings, and to provide an opportunity to comment on the DSEIS and proposed rule. We invited all Tribes in Arizona and New Mexico to request government-to-government consultation under Secretarial Order 3206, and we held Tribal Working Group meetings, open to all Tribes, to discuss our proposed revisions within the context of Tribal land. If future activities resulting from this rule may affect Tribal resources, the USFWS will communicate and consult on a government-to-government basis with any affected Native American Tribes in order to find a mutually agreeable solution.

National Environmental Policy Act

We have prepared a final supplemental environmental impact

statement (FSEIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with this rule to revise the Mexican wolf experimental population designation. The purpose of the FSEIS is to identify and disclose the environmental consequences resulting from the revision of the existing experimental population designation of the Mexican wolf. The FSEIS is an outgrowth of the public scoping process we conducted from April 15, 2020, to June 15, 2020 (85 FR 20967; April 15, 2020), and the public and peer review comments we received on the draft supplemental environmental impact statement (DSEIS) (see 86 FR 60029; October 29, 2021) and our October 29, 2021, proposed rule (86 FR 59953). We used the FSEIS, which we published in the **Federal Register** on May 13, 2022 (87 FR 29272), to inform our final decision on the revision to the regulations for the experimental population of Mexican wolves in the MWEPA.

Energy Supply, Distribution, or Use—Executive Order 13211 (E.O. 13211)

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use because this rule allows the reintroduction and management of Mexican wolves. Mexican wolves reintroduced and managed in the MWEPA do not change where, when, or how energy resources are produced or distributed. Because this action is not a significant energy action, no statement of energy effects is required.

References Cited

A complete list of all references cited in this rule is available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0103, or upon request from the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Mexican Wolf Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authorities for this action are the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.84 by:
■ a. Revising paragraph (k)(1);
■ b. Adding paragraphs (k)(7)(iv)(C)(*1*) and (*2*);
■ c. Redesignating paragraphs (k)(7)(v)(A)(*1*) and (*2*) as (k)(7)(v)(A)(*3*) and (*4*);
■ d. Adding new paragraphs (k)(7)(v)(A)(*1*) and (*2*);
■ e. Adding paragraph (k)(7)(vi)(E);
■ e. Revising paragraph (k)(9)(iii);
■ f. Adding paragraph (k)(9)(v); and
■ g. Revising paragraph (k)(10).

The revisions and additions read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) * * *

(1) *Purpose of the rule.* The U.S. Fish and Wildlife Service (USFWS) finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation and recovery of the Mexican wolf subspecies. The USFWS also finds that the experimental population is not essential under § 17.81(c)(2).

* * * * *

(7) * * *

(iv) * * *

(C) * * *

(*1*) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age in the MWEPA, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(*i*) Annual release benchmarks (for the purposes of this paragraph, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 1 TO PARAGRAPH (k)(7)(iv)(C)(*1*)(*i*)

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(*ii*) Permitted take on non-Federal land, or on Federal land under paragraph (k)(7)(v) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(*2*) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

(v) * * *

(A) * * *

(*1*) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(*i*) Annual release benchmarks (for the purposes of this paragraph, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 2 TO PARAGRAPH (k)(7)(v)(A)(*1*)(*i*)

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(*ii*) Permitted take on Federal land, or on non-Federal land under paragraph

(k)(7)(iv) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(*2*) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

* * * * *

(vi) * * *

(E) No requests for take in response to unacceptable impacts to a wild ungulate herd may be made by the State game and fish agency or accepted by the USFWS until the genetic objective at paragraph (k)(9)(v) of this section has been met.

* * * * *

(9) * * *

(iii) Based on end-of-year counts, we will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. This average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual population growth rate averaged over the 8-year period must demonstrate a stable or increasing population, as calculated by a geometric mean.

* * * * *

(v) The USFWS and designated agencies will conduct a sufficient number of releases into the MWEPA from captivity to result in at least 22 released Mexican wolves surviving to breeding age.

(10) *Evaluation.* The USFWS will continue to evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, approximately 5 years after August 1, 2022, the USFWS will prepare a one-time overall evaluation of the experimental population program that focuses on modifications needed to improve the efficacy of this rule and the progress the experimental population is making to the recovery of the Mexican wolf.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–14025 Filed 6–30–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220627–0143]

RIN 0648–BL17

Atlantic Highly Migratory Species; Shortfin Mako Shark Retention Limit

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS is implementing a flexible shortfin mako shark retention limit with a default limit of zero in commercial and recreational Atlantic highly migratory species (HMS) fisheries. The default limit of zero will remain in place unless and until changed. Under this final rule, future changes to the retention limit can only be made based on consideration of regulatory criteria and only if consistent with an allowable retention determination made by the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to Recommendation 21–09. This action is necessary to implement the binding recommendations of ICCAT adopted in 2021, as authorized under the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This final rule is effective July 5, 2022.

ADDRESSES: Electronic copies of this final rule and supporting documents are available from the Atlantic HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Carrie Soltanoff at *carrie.soltanoff@noaa.gov* or 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (*carrie.soltanoff@noaa.gov*), Guy DuBeck (*guy.dubeck@noaa.gov*), Erianna Hammond (*erianna.hammond@noaa.gov*), or Ann Williamson (*ann.williamson@noaa.gov*) at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed primarily under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and ATCA (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. ATCA authorizes the Secretary of Commerce to promulgate such regulations as necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary of Commerce to the NMFS Assistant Administrator.

Background information about the need to implement a retention limit for shortfin mako sharks was provided in the preamble to the proposed rule (87 FR 21077, April 11, 2022) and is not repeated here. The comment period for the proposed rule closed on May 11, 2022. NMFS received 22 written comments as well as oral comments during the public hearing held by webinar on April 27, 2022. The comments received, and the responses to those comments, are summarized in the Response to Comments section. After considering public comments on the proposed rule, NMFS is finalizing the rule as proposed. As described, no changes are made from the proposed rule.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this final rule. The full list of alternatives and their analyses are provided in the final EA/RIR/FRFA and are not repeated here. A summary of the FRFA is provided below. A copy of the final EA/RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**).

As described in the proposed rule, Recommendation 21–09, adopted at the November 2021 ICCAT annual meeting, prohibits retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023. Limited retention of shortfin mako sharks may be allowed in 2023 and future years if ICCAT determines that fishing mortality is at a low enough level North Atlantic-wide to allow retention consistent with the conservation objectives of the recommendation.

In order to meet domestic management objectives, implement Recommendation 21–09, and acknowledge the possibility of future retention, this final rule implements a flexible shortfin mako shark retention limit with a default limit of zero in commercial and recreational HMS fisheries. The retention limit applies to commercial vessels issued a Shark

Directed or Shark Incidental LAP using pelagic longline, bottom longline, or gillnet gear, and to recreational HMS permit holders (those who hold HMS Angling or Charter/Headboat permits). It also applies to Atlantic Tunas General category and Swordfish General Commercial permits when participating in a registered HMS tournament. Retention already is not allowed for other permits and gear types (see §§ 635.21(a)(4) and 635.24(a)(4)(i) and (iii)). Thus, retention in all commercial and recreational fisheries is prohibited for 2022 consistent with the ICCAT recommendation, and all commercial and recreational fishermen are required to release all shortfin mako sharks, whether dead or alive, at haulback.

The shortfin mako shark retention limit per trip of zero will remain in place unless changed after consideration of the inseason trip limit adjustment criteria (§ 635.24(a)(8)) and consistent with any ICCAT retention allowances pursuant to Recommendation 21–09. If the retention limit is increased, it would apply only to commercial vessels issued a Shark Directed or Shark Incidental LAP using pelagic longline, bottom longline, or gillnet gear, and/or to recreational HMS permit holders (those who hold HMS Angling or Charter/Headboat permits) and Atlantic Tunas General category and Swordfish General Commercial permits when participating in a registered HMS tournament). It would not apply to other fisheries and gear types where retention is otherwise prohibited. If a retention limit greater than zero is implemented for the commercial fishery, the commercial shortfin mako shark fishing restrictions in effect prior to this final rule would once again also apply. Similarly, if a retention limit greater than zero is implemented for the recreational fishery, the recreational shortfin mako shark fishing restrictions in effect prior to this final rule would again also apply.

Additionally, under this final rule, research and sampling of shortfin mako sharks continues to be allowable under exempted fishing permits (EFPs) and scientific research permits (SRPs) (see §§ 635.27(b)(4) and 635.32). Collection of shortfin mako sharks under display permits is not allowed. Applications for EFPs and/or SRPs will be considered on a case-by-case basis. Collection of shortfin mako sharks under EFPs and/or SRPs could include sampling or limited retention where needed for scientific research. Only non-lethal sampling would be permitted on shortfin mako sharks that are alive at haulback. NMFS intends to limit any such EFPs and/or SRPs to closely monitored studies and to limit the number of such permits and the number of sharks that may be sampled and/or retained. When retention is otherwise prohibited, any retention pursuant to an EFP and/or SRP will be accounted for under the applicable shark research and display quota. If retention is otherwise permitted, consistent with ICCAT recommendations, NMFS will count any retention under EFPs and/or SRPs against the applicable ICCAT retention allowance.

NMFS is also making a minor modification to the pelagic longline gear restrictions at § 635.21(c)(1)(iv) to further clarify the shortfin mako shark live release requirements.

Response to Comments

Written comments can be found at *www.regulations.gov* by searching for ''NOAA–NMFS–2022–0015.'' Below, NMFS summarizes and responds to the comments made on the proposed rule during the comment period.

Comment 1: NMFS received several comments in support of the proposed measures (preferred Alternative 2 in the EA for this action). Commenters stated that they supported these measures due to the ICCAT stock assessment showing that the North Atlantic shortfin mako shark stock is overfished and subject to overfishing; the role of shortfin mako sharks as apex predators in the marine ecosystem; the life history traits of this species including slow growth and late reproductive maturity; the high risk of this species to overfishing; and listing of this species as endangered on the International Union for Conservation of Nature (IUCN) Red List of Threatened Species. Some commenters supported the zero retention limit in order to allow sustainable commercial and recreational fishing for shortfin mako sharks in the future.

Response: NMFS agrees that these measures, along with other conservation and management measures that are in place, are appropriate given the stock assessment conclusion that the North Atlantic shortfin mako shark stock is overfished and subject to overfishing. These measures are based on the best scientific information available, which recognizes the species' life history traits, including late reproductive maturity. NMFS shares the commenters' view that putting a retention limit of zero in place now should contribute to allowing the population to support future sustainable fisheries.

Regarding the IUCN Red List status of shortfin mako sharks, NMFS scientists participate in the species assessment for the Red List, but NMFS does not base management actions on IUCN designations. The IUCN uses different criteria than applicable under the Endangered Species Act (ESA) for determining whether a species is threatened or endangered or for determining whether stocks are overfished or overfishing is occurring under the Magnuson-Stevens Act.

Comment 2: Several comments supported a retention limit of zero for shortfin mako sharks but stated that the retention limit should be extended domestically beyond 2023, even if some level of retention is allowed beginning in 2023 under Recommendation 21–09, and stay in place until the population is rebuilt, as determined by a stock assessment. Some commenters urged NMFS to take a precautionary approach to shortfin mako shark management. Some commenters stated that allowing retention before the population is rebuilt would be inconsistent with the best scientific information available, as required under National Standard 2 of the Magnuson-Stevens Act.

Response: NMFS disagrees that the HMS regulations should specify that the retention limit of zero for shortfin mako sharks should remain in place until the population is determined to be rebuilt. The purpose of this action is to implement ICCAT Recommendation 21–09, which includes the possibility of limited future retention of shortfin mako sharks as determined by ICCAT consistent with this recommendation. Recommendation 21–09 specifies that retention may only occur when the overall level of fishing mortality prevents overfishing with a high probability (*i.e.,* under 250 mt for all ICCAT parties combined). Recommendation 21–09 also provides that a rebuilding program for North Atlantic shortfin mako shark is being undertaken starting in 2022 to end overfishing immediately and gradually achieve biomass levels sufficient to support maximum sustainable yield (MSY) by 2070 with a probability of a range of between 60 and 70 percent at least. The initial aim of the recommendation is to reduce total fishing mortality, to maintain mortality at sustainable levels to rebuild the stock, and to establish a process to determine whether in any given year there is a possibility for retention. ICCAT determinations regarding longer-term retention or measures that are appropriately part of a rebuilding plan have not yet been made. As described in Chapter 4.1 of the EA, possible future increase of the shortfin mako shark retention limit above zero, consistent with the limits specified in Recommendation 21–09 and the domestic inseason adjustment criteria, would not be expected to have an

adverse impact on the stock. Additionally, the U.S. portion of total ICCAT shortfin mako shark catch has historically been low (approximately 14 percent, on average, at the time of the 2017 stock assessment). Under a retention limit greater than zero, U.S. retention would continue to be limited by the commercial and recreational restrictions under the current regulations. Further, Recommendation 21–09 limits possible future retention of shortfin mako sharks to those that are dead at haulback.

Regarding National Standard 2 of the Magnuson-Stevens Act, as described in Chapter 8 of the EA, National Standard 2 requires that conservation and management measures be based on the best scientific information available. NMFS determined that the preferred Alternative 2, implemented in this action, is consistent with National Standard 2. These measures are based on the latest ICCAT Standing Committee on Research and Statistics (SCRS) stock assessment for shortfin mako sharks, and specific SCRS advice regarding recommended management approaches (*i.e.,* no retention) pending reduction of catch below 250 mt. Any shortfin mako shark retention allowed by ICCAT would take into consideration the best scientific information available regarding landings and dead discards across all ICCAT parties. Results from the stock assessment and the other data sources represent the best available science.

Comment 3: One commenter stated that the current commercial fishery restrictions would apply if the flexible shortfin mako shark retention limit were increased above zero, and that the current restrictions are inadequate to rebuild the population.

Response: Regarding the commercial fishery regulations in effect prior to this final rule, in the FEIS for Amendment 11 to the 2006 Consolidated HMS FMP (Amendment 11), NMFS concluded that the commercial measures would have short- and long-term minor beneficial ecological impacts to the North Atlantic shortfin mako shark stock. The Amendment 11 measures were implemented to reduce U.S. shortfin mako shark catch to levels consistent with ending overfishing and beginning to rebuild the stock. U.S. shortfin mako shark catch is a small percentage of total North Atlantic-wide catch and so domestic reductions in shortfin mako shark mortality alone cannot end overfishing of, or rebuild, the entire North Atlantic stock.

Comment 4: NMFS received several comments in support of a non-preferred alternative (Alternative 3) to prohibit retention of shortfin mako sharks through placing the species on the Atlantic HMS prohibited sharks list. Commenters stated that this alternative would be in line with the SCRS advice and Recommendation 21–09. Commenters also stated that NMFS' analyses show that this measure would not have substantial economic impacts on commercial or for-hire fisheries or HMS tournaments. One commenter stated that shortfin mako sharks also meet one of the criteria for putting sharks on the prohibited species list, § 635.34(c)(4), because the species is difficult to distinguish from other prohibited species, since it is easily confused with longfin mako sharks.

Response: NMFS is not implementing Alternative 3 (prohibit retention of shortfin mako sharks) at this time because that measure would be beyond the scope of this action to implement ICCAT Recommendation 21–09. Under § 635.34(c), NMFS considers four criteria when placing a species on the Atlantic HMS prohibited species list. These criteria are: (1) Biological information indicating that the stock warrants protection; (2) Information indicating that the species is rarely encountered or observed caught in HMS fisheries; (3) Information indicating that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS; and (4) Whether the species is difficult to distinguish from other prohibited species.

Although shortfin mako sharks meet criteria 1 and 3 of the four prohibited species criteria, NMFS is not adding shortfin mako sharks to the prohibited species list for several reasons. First, if ICCAT should make changes to the retention allowance in the future under Recommendation 21–09, the preferred alternative gives NMFS flexibility to make changes to the retention limit quickly to allow U.S. fishermen the opportunity to potentially land shortfin mako sharks, or to again prohibit retention quickly by setting the limit at zero when needed. Additionally, the shortfin mako shark mortality associated with current U.S. landings is minimal when compared to the total North Atlantic shortfin mako shark mortality. Therefore, NMFS is not implementing this alternative at this time.

Regarding criterion four, shortfin mako sharks are not easily confused with other shark species. The species that look the most like shortfin mako sharks are porbeagle and white sharks. However, there are several clear differences in their dorsal fin coloration, second dorsal fin position, and teeth. Porbeagle sharks have a unique white patch on the trailing edge of the first dorsal fin, which makes the mark a great identification characteristic that can easily be seen while the shark is alive and in the water. The position of the second dorsal fin is in line with the anal fin in porbeagle and shortfin mako sharks, while the second dorsal fin is positioned between the pelvic and anal fin in white sharks. If the shark is brought to the vessel dead, fishermen could also examine the teeth before deciding whether the species can be retained. Specifically, porbeagle sharks have smooth, bladelike teeth with cusplets, while shortfin mako sharks have smooth, bladelike teeth without cusplets, and white sharks have large, triangular, serrated teeth. One of the commenters suggested that shortfin mako sharks could be mistaken for longfin mako sharks. NMFS has not found that to be true. Longfin mako sharks have been on the prohibited species list since 2000. During that time, few fishermen have mistaken the species for shortfin mako sharks. Compared to shortfin mako sharks, longfin mako sharks have much longer pectoral fins, have a different body shape, and are dark on the underside of the snout.

Comment 5: One comment supported the proposed flexible retention limit for shortfin mako sharks as a short-term solution with the goal of ultimately adding the shortfin mako shark to the prohibited sharks list in the long-term.

Response: For the reasons described in the responses to Comments 1 and 4 and Chapter 4 of the EA, NMFS is implementing the measures under preferred Alternative 2 to implement a flexible shortfin mako shark retention limit with a default limit of zero, and is not adding the species to the HMS prohibited sharks list under Alternative 3. This does not preclude NMFS from adding shortfin mako sharks to the prohibited sharks list in the future if new information or international or domestic action necessitate that measure, for example, under a future ICCAT recommendation or following domestic determinations under the ESA.

Comment 6: NMFS received several comments supporting a ban on shortfin mako shark retention, rather than a flexible retention limit with a default limit of zero. Commenters supported banning retention due to the ICCAT stock assessment showing that the North Atlantic shortfin mako shark stock is overfished and subject to overfishing; the scientific advice and projections from the SCRS, including that the population will continue to decline for several years before it begins to recover, even with no retention; the need to

incentivize avoidance of this species by fishing vessels; the high susceptibility of the species as identified in the SCRS Ecological Risk Assessment for sharks; the role of shortfin mako sharks as apex predators in the marine ecosystem; the life history traits of this species including slow growth and late reproductive maturity; listing of this species as endangered on the IUCN Red List; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) status of this species; and the need to save this species from extinction. Some commenters specifically opposed flexibility in the retention limit. One commenter supported maintaining a full retention ban until at least 2035 or whenever a new stock assessment demonstrates rebuilding will be successful.

Response: NMFS disagrees that the Agency should implement a retention ban for shortfin mako sharks, which NMFS understands to mean implementing a retention limit of zero with no flexibility to increase the retention limit in the future. NMFS believes that implementation of the preferred alternative, including a flexible retention limit, best meets the purpose and need for this action: to implement ICCAT Recommendation 21–09. If retention is later allowed by ICCAT pursuant to the provisions in the recommendation, section 304(g)(1)(D) of the Magnuson-Stevens Act requires the Agency to provide fishing vessels with a reasonable opportunity to harvest U.S. allocation or quota under an international fishery agreement. Under these measures, NMFS could change the shortfin mako shark retention limit based on the inseason trip limit adjustment criteria where consistent with any future retention allowance that is determined by ICCAT consistent with Recommendation 21–09. ICCAT adopted Recommendation 21–09 in order to address the stock status of North Atlantic shortfin mako sharks (overfished and experiencing overfishing) and recognizing the results of the SCRS ecological risk assessment for sharks and the SCRS advice that, regardless of allowable catch levels, the shortfin mako shark spawning stock biomass will continue to decline until 2035 before any increase can occur, owing to the time it takes juveniles to reach maturity. As described in Chapter 4 of the EA, these measures may have the effect of disincentivizing shortfin mako shark catch, although only to the extent commercial fishermen could further explore and find ways to avoid shortfin mako sharks through gear modification or changing fishing locations.

Regarding CITES status, the CITES status of shortfin mako sharks has been addressed in the United States through appropriate permitting requirements, and is outside the scope of this rulemaking. CITES classifies species based on the level of trade monitoring needed to ensure the population recovers or remains healthy. Through CITES, the United States has agreed to increase protections and international trade monitoring for a number of shark species, including shortfin mako sharks. Shortfin mako sharks are included in CITES Appendix II, under which commercial international trade is allowed, and in the United States permit requirements specific to CITES are managed primarily by the U.S. Fish and Wildlife Service. IUCN Red List status of shortfin mako sharks is discussed in the response to Comment 1.

Comment 7: NMFS received a comment that retention of shortfin mako sharks for scientific research should be banned as well, because that activity risks fatal injuries to the sharks.

Response: Determinations regarding individual EFPs or SRPs for shortfin mako research would be made on a case-by-case basis; NMFS is not authorizing any particular research, retention, or sampling with this final rule. NMFS disagrees that scientific research sampling of shortfin mako sharks should be banned under HMS EFPs and SRPs. As described in Chapter 2 of the EA, considering the fact that the shortfin mako shark retention limit will otherwise be set at zero, NMFS intends to limit any EFPs and SRPs to closely monitored studies, and to limit the number of such permits and the number of sharks that may be retained, if any. Research on shortfin mako sharks is critical to gathering scientific information about the stock and to helping ensure that stock assessments have sufficient data. Permitted collection of shortfin mako sharks for scientific research is consistent with the biological sampling and research needs described in Recommendation 21–09 and other relevant ICCAT recommendations, as well as research needs identified by the SCRS, including to provide data for future shortfin mako shark stock assessments. For example, Recommendations 21–09 and 13–10 (*Recommendation on Biological Sampling of Prohibited Shark Species by Scientific Observers*) provide for collection of biological samples of shortfin mako and other sharks that are dead at haulback during commercial fishing operations by scientific observers or individuals duly permitted by the ICCAT party.

Comment 8: Some comments supported including all relevant commercial and recreational fisheries in the scope of this rulemaking, including fisheries, such as bottom longline and gillnet shark fisheries, which are not considered ICCAT fisheries.

Response: NMFS agrees with the commenters on including gears that are not associated with ICCAT fisheries, such as bottom longline and gillnet shark fisheries, in this action. This approach is consistent with the approach taken in Amendment 11, where NMFS determined it was appropriate to implement parallel management measures in the non-ICCAT shark fisheries given that the stock remained overfished with overfishing occurring. This approach ensures consistency in HMS regulations across gear types, which will provide clarity for both the regulated community and for enforcement purposes and thus ensure more effective implementation. The purpose of this action is to implement ICCAT Recommendation 21–09, which prohibits the retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023, among other measures. In this action, after considering the measures implemented under Amendment 11 that considered the requirements of the Magnuson-Stevens Act, the status of shortfin mako sharks, and the need for consistency, NMFS is applying a flexible retention limit with a default of zero to non-ICCAT fishery gear types (bottom longline and gillnet).

Comment 9: NMFS received a comment that the alternative to prohibit retention of shortfin mako sharks is the most consistent with National Environmental Policy Act (NEPA) requirements, since public comment would be taken on any future action to allow retention. The commenter stated that the flexible retention limit under the preferred alternative, on the other hand, would not require public comment to increase the retention limit, which would be inconsistent with NEPA requirements. The commenter further stated that the preferred alternative did not analyze an upper retention limit and therefore the analyses in the EA are inadequate.

Response: NMFS disagrees that increasing the shortfin mako shark retention limit in the future would be inconsistent with NEPA requirements. Inseason trip limit adjustment criteria are described in the current HMS regulations (see § 635.24(a)(8)), as augmented in this action, and those

regulatory criteria would be used for any future adjustment of the shortfin mako shark retention limit, as they are currently for adjustment of other shark retention limits (for example, § 635.24(a)(2)). In addition, any future change to the shortfin mako shark retention limit would be implemented only to the extent future retention is allowable as determined by ICCAT consistent with Recommendation 21–09. Although an upper per trip retention limit for shortfin mako sharks is not analyzed in this action, the EA effectively analyzes the possible effects of any retention limit increases that fall within (and would effectuate) a future U.S. retention allowance under the current Recommendation. A future U.S. retention allowance would occur within the Recommendation's overall limit on total fishing mortality and the United States' portion of that allowance and would not have additional impacts outside those analyzed. Furthermore, any retention allowance for the United States would likely be small since it must be under 250 mt for all ICCAT parties combined, and the U.S. portion of total ICCAT shortfin mako shark catch has historically been low. When NMFS establishes a per-trip retention limit, it will constrain U.S. catch within that U.S. retention allowance. Additionally, under a retention limit greater than zero, U.S. shortfin mako shark retention would continue to be limited by the commercial and recreational restrictions in the current regulations, along with additional restrictions on retention of sharks that are alive at haulback. Recommendation 21–09 only allows for possible future retention of shortfin mako sharks that are dead at haulback, which further restricts possibilities for U.S. retention under a possible future retention allowance. These measures for shortfin mako sharks are analyzed in the EA for this action under preferred Alternative 2, considering public comments received on the proposed rule and draft EA and IRFA, consistent with NEPA requirements.

Comment 10: NMFS received comments, including from the State of Georgia, opposing implementation of a default retention limit of zero for shortfin mako sharks in directed shark fisheries or in recreational fisheries. Commenters stated that the United States has already effectively reduced shortfin mako shark catch in proportion to the U.S. contribution to stock-wide catches. The State of Georgia also commented that the Agency should not implement measures beyond those under Amendment 11 in directed shark fisheries, and that the HMS regulations implementing ICCAT recommendations on oceanic whitetip sharks and hammerhead sharks were not implemented in non-ICCAT, directed shark fisheries for consistency.

Response: NMFS agrees that the measures implemented under Amendment 11 were effective at meeting the management objectives of that action, and reduced catch levels of shortfin mako sharks in U.S. fisheries to a level consistent with ending overfishing of the stock. However, as described under the No Action Alternative (Alternative 1) in Chapter 4 of the EA, the current measures are not sufficient to meet the purpose and need for the present action. The purpose of this action is to implement ICCAT Recommendation 21–09, which prohibits the retention of North Atlantic shortfin mako sharks. The action is needed because the current HMS regulations, which allow limited retention of shortfin mako sharks in commercial and recreational fisheries, are inconsistent with the requirements of Recommendation 21–09.

NMFS disagrees that shortfin mako shark retention limit should not apply in directed shark fisheries. As described in Chapter 2 of the EA, the flexible retention limit would apply in the HMS bottom longline and gillnet fisheries for sharks, although those fisheries are not considered to be ICCAT fisheries, which are defined as fisheries for tuna or tuna-like species under the current ICCAT Convention. This approach is consistent with the approach taken in Amendment 11, where NMFS determined it was appropriate to implement parallel management measures in the non-ICCAT shark fisheries given that the stock remained overfished with overfishing occurring. This approach would ensure consistency in HMS regulations, which would provide clarity for both the regulated community and for enforcement purposes and thus ensure more effective implementation. NMFS did not, however, implement the ICCAT requirement that electronic monitoring be onboard in these fisheries, because bottom longline and gillnet fisheries have minimal interactions with this species, and electronic monitoring was unnecessary to track such interactions effectively. After considering the measures implemented under Amendment 11 that considered the requirements of the Magnuson-Stevens Act, the status of shortfin mako sharks, and the need for consistency, NFMS would apply a flexible retention limit with a default of zero to these gears.

Comment 11: Several commenters suggested measures that could be implemented instead of a retention limit of zero in the recreational fishery. Suggestions included a recreational limit of one shortfin mako shark per vessel per year; a limit of two sharks per year: one trophy size and one for personal consumption; banning the retention of females; banning retention in tournaments; mandatory reporting; increasing the minimum sizes; and managing shortfin mako sharks like deer (*i.e.,* through administration of a system that provides fishermen with a tag or limited number of tags). NMFS received a suggestion to implement a fee for each shortfin mako shark caught, and a higher fee if the shark is brought to the vessel dead.

Response: NMFS appreciates the comments suggesting ways to allow retention of shortfin mako sharks while reducing the overall number of sharks harvested. However, allowing retention of shortfin mako sharks would not be consistent with the purpose of this action to implement ICCAT Recommendation 21–09, which prohibits the retention of North Atlantic shortfin mako sharks in 2022 and 2023. NMFS is implementing a flexible shortfin mako shark retention limit with a default limit of zero for HMS permit holders. The limit of zero remains in place until NMFS changes it following consideration of regulatory criteria for inseason adjustment of shark trip limits and consistent with any ICCAT retention allowances pursuant to Recommendation 21–09. If a retention limit greater than zero is implemented for the recreational fishery, the current recreational shortfin mako shark restrictions would again also apply, including minimum size limits of 71 inches fork length (FL) (180 cm FL) for male and 83 inches FL (210 cm FL) for female shortfin mako sharks. Also of note, Recommendation 21–09 limits possible future retention of shortfin mako sharks to those that are dead at haulback. NMFS may consider additional management measures if ICCAT restrictions allow more retention of shortfin mako sharks in the future. For example, mandatory recreational catch reporting for pelagic sharks, including shortfin mako, may be considered in an upcoming rulemaking focused on reporting.

Comment 12: The State of Georgia commented that retention of oceanic whitetip and scalloped hammerhead sharks should be prohibited in Atlantic HMS fisheries due to their ESA threatened status.

Response: This comment is outside the scope of this rulemaking. NMFS

notes, however, that in 2020, NMFS released two Biological Opinions for HMS Fisheries under section 7(a)(2) of the ESA. These Biological Opinions strongly encouraged the inclusion of oceanic whitetip and scalloped hammerhead sharks as prohibited shark species for recreational and/or commercial Atlantic HMS fisheries. As a result, NMFS is currently considering undertaking rulemaking that considers prohibiting the commercial and recreational retention of scalloped hammerhead sharks in the Central and Southwest distinct population segment and of oceanic whitetip sharks throughout their range, consistent with the 2020 Biological Opinions. That proposed rule is expected later in 2022. This information is also included in Chapter 4.8 of the EA.

Comment 13: Some comments opposed allowing targeted catch-and-release recreational fishing for shortfin mako sharks.

Response: NMFS disagrees that targeted catch-and-release recreational fishing for shortfin mako sharks should not be permitted when the default retention limit of zero is in place. The purpose of this action is to implement ICCAT Recommendation 21–09, which prohibits retention of shortfin mako sharks. Catch-and-release fishing is consistent with the measures in Recommendation 21–09 and with implementation of a flexible retention limit with a default of zero. The retention limit of zero would prevent recreational fishermen from retaining shortfin mako sharks, which would reduce mortality. Allowing catch-and-release fishing is consistent with non-retention requirements. As described in Chapter 4 of the EA, studies have shown that post-release mortality among recreationally caught shortfin mako sharks is relatively low. Overall, the recreational measures, including a default retention limit of zero while allowing catch-and-release fishing, are anticipated to have a minor, beneficial effect on the stock. Additionally, by allowing fishermen to catch-and-release shortfin mako sharks, data required for stock assessments would continue to be collected. Specifically, NMFS could continue to collect recreational survey data for shortfin mako sharks, including data on effort and catch rates. Regarding socioeconomic impacts on the recreational fishery, as described in Chapter 4 of the EA, prohibiting catch-and-release fishing for shortfin mako sharks would double the estimated loss to supporting businesses and industries in recreational trip expenditures, increasing adverse impacts compared to the preferred alternative (reduction of $2.4 million in trip expenditures, compared to reduction of $1.1 million under the preferred alternative).

Comment 14: NMFS received a comment that the proposed rule only considered commercial fisheries and tournaments. The commenter requested that the recreational sector outside of tournaments be included if retention is allowed.

Response: This final rule implements a flexible shortfin mako shark retention limit with a default limit of zero in commercial and recreational HMS fisheries. To the extent that any future retention is allowed, consistent with the inseason trip limit adjustment criteria and Recommendation 21–09, any increase of the shortfin mako shark retention limit from the default, or subsequent decrease, could apply to the commercial fishery, the recreational fishery, or both. If the retention limit is increased above zero in the recreational fishery, that change could apply to both tournament and non-tournament fishing. Individual anglers, in additional to tournaments, are included in this action overall and in the analyses in the EA.

Comment 15: One commenter requested data on where overharvest of shortfin mako sharks is occurring and the harvest data for each country involved.

Response: NMFS acknowledges that countries other than the United States are responsible for the majority of North Atlantic shortfin mako shark fishing mortality, hence the need for international coordination through ICCAT on measures to end overfishing and rebuild the stock. Reported harvest levels by country are provided in the Task I catch data tables in the annual SCRS reports (2021 report available at *https://www.iccat.int/Documents/Meetings/Docs/2021/REPORTS/2021_SCRS_ENG.pdf,* shortfin mako shark data table on pages 260–261) and the ICCAT statistical database website (*https://www.iccat.int/en/accesingdb.html*).

Comment 16: NMFS received comments that the Magnuson-Stevens Act requires the Agency to develop a rebuilding plan for shortfin mako sharks since the stock was determined to be in an overfished condition.

Response: NMFS has an obligation to implement binding ICCAT recommendations under ATCA, consistent with our obligations under the ICCAT treaty. The Magnuson-Stevens Act requires NMFS to take measures to end overfishing and to rebuild the stocks. North Atlantic shortfin mako shark distribution spans a large portion of the North Atlantic Ocean basin and many countries besides the United States interact with the species. Addressing overfishing and an overfished status can only effectively be accomplished through international efforts where other countries that have large landings of shortfin mako sharks actively and equitably participate in mortality reduction and rebuilding plan discussions. Because of the small U.S. contribution to North Atlantic shortfin mako shark mortality, domestic reductions of shortfin mako shark mortality alone would not end overfishing of the entire North Atlantic stock. Under Amendment 11, NMFS established the foundation for developing an international rebuilding plan for shortfin mako sharks, by adopting measures to end overfishing and taking action at the international level through ICCAT to develop a rebuilding plan. As part of that measure, Amendment 11 stated that any international management recommendations adopted by ICCAT to address shortfin mako shark rebuilding and to reduce mortality would be implemented domestically consistent with ATCA, including measures implemented under that amendment. This action implements ICCAT Recommendation 21–09 in an effective way, addressing overfishing and starting to rebuild the stock. The measures in Recommendation 21–09 were adopted as part of a rebuilding program for North Atlantic shortfin mako shark starting in 2022, with the objectives to ''end overfishing immediately and gradually achieve biomass levels sufficient to support maximum sustainable yield (MSY) by 2070 with a probability of a range of between 60 and 70 percent at least.''

Comment 17: One commenter stated that NMFS should specify and implement additional catch monitoring and reporting measures to collect accurate and precise shortfin mako shark catch and bycatch information. Suggested measures include improving recreational data, enhancing commercial monitoring, and creating a public reporting portal for the recreational and commercial fisheries.

Response: NMFS agrees that catch monitoring and reporting are critical components of managing shortfin mako sharks, both at ICCAT and domestically, and that improvements to recreational data reporting are necessary at the international level. Toward this end, the United States advocated for strong reporting requirements to be included in Recommendation 21–09, including that ICCAT parties present their statistical methodology used to estimate dead discards and live releases to the SCRS

and that the SCRS review and approve or provide feedback on those methods, and that parties that do not appropriately report their shortfin mako shark landings and discards would not be able to retain this species when retention is otherwise allowable. These provisions were included in the recommendation (see paragraphs 13 and 14).

NMFS is not adopting additional catch monitoring and reporting requirements in this action. The purpose of this action is to implement ICCAT Recommendation 21–09. U.S. shortfin mako shark catch monitoring and reporting meet the requirements of Recommendation 21–09 and other relevant ICCAT recommendations, as well as domestic requirements. Therefore, NMFS does not agree that additional measures should be implemented under this action. Enhanced reporting may be considered in future rulemakings, for example, mandatory reporting of recreational catch of all pelagic sharks.

Comment 18: NMFS received a comment that the Agency should require full-chain traceability for all catches of shortfin mako sharks through the Seafood Import Monitoring Program and the pending Food and Drug Administration traceability rules, in order to close a loophole for any illegal catch of North Atlantic shortfin mako sharks.

Response: This comment is beyond the scope of this rulemaking. The purpose of this action is to implement ICCAT Recommendation 21–09, which prohibits the retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023, among other measures. For more information on the Seafood Import Monitoring Program, please refer to the website: *https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program.*

Comment 19: NMFS received comments that the Agency recommends a probability of 70 percent for rebuilding of overfished stocks in domestic fisheries, which commenters stated was not in line with past U.S. proposals on shortfin mako shark management at ICCAT, or with the 250-mt mortality threshold in Recommendation 21–09.

Response: Consistent with the 2006 Consolidated HMS FMP, the HMS management risk policy for most Atlantic shark stocks is to ensure a 70-percent likelihood of success in ending and preventing overfishing, rebuilding overfished stocks, and maintaining healthy stocks, because most sharks have low reproductive potential, are long-lived, and have slow population growth rates. Within the existing risk policy, a range between 50 and 70 percent likelihood of success has also been considered depending on the stock and relevant circumstances, and is determined on a case-by-case basis.

The purpose of this action is to implement ICCAT Recommendation 21–09 on North Atlantic shortfin mako sharks. The measures in Recommendation 21–09 were adopted as part of a rebuilding program for North Atlantic shortfin mako shark starting in 2022 with the objectives to ''end overfishing immediately and gradually achieve biomass levels sufficient to support MSY by 2070 with a probability of a range of between 60 and 70 percent at least.'' These measures are consistent with ICCAT Recommendation 11–13 on the principles of decision making for ICCAT conservation and management measures and are also consistent with the HMS shark management risk policy and Magnuson-Stevens Act requirements.

Comment 20: One comment suggested that NMFS should consider the example of barndoor skate management, in which only limited landings under special permits were allowed before the population was declared fully rebuilt.

Response: Barndoor skates are managed by the New England Fishery Management Council under the Northeast Skate Complex FMP (Skate FMP). The stock was determined to be overfished and possession and landing were prohibited in 2003 when the Skate FMP was first implemented (68 FR 49693, August 19, 2003). As the stock was rebuilding, segments of the commercial skate fishery expressed an interest in developing an experimental fishery where limited landings would be permitted while collecting fishery and biological data. The study was approved under an EFP in 2014 (79 FR 26414, May 8, 2014), and the retention prohibition was ultimately removed in 2018 after the barndoor skate stock was determined to be rebuilt (83 FR 48985, September 28, 2018). While NMFS and the New England Fishery Management Council felt that this approach and timing were appropriate given the stock conditions and specific fishery circumstances in this case, there are a wide variety of considerations and information that fishery managers must evaluate when determining whether to prohibit retention of a species and potentially permitting retention of prohibited species. There are a number of critical differences between the barndoor skate fishery and fisheries that catch shortfin mako sharks; for example, barndoor skate is not internationally managed, is not a North Atlantic-wide stock, and does not have a recreational fishery.

The purpose of this action is to implement ICCAT Recommendation 21–09, including allowing for the possibility of limited future retention of shortfin mako sharks as determined by ICCAT consistent with this recommendation. Prohibiting shortfin mako shark retention while also allowing limited commercial retention under EFPs would not be consistent with the purpose of this action. Therefore, NMFS does not agree that barndoor skate fishery management is an appropriate model for U.S. shortfin mako shark fishery management.

Comment 21: NMFS received comments that the Agency should expand the electronic monitoring requirement for retention of shortfin mako sharks that are dead at haulback in commercial fisheries to cover vessels fishing with bottom longline or gillnet gear, in addition to vessels fishing with pelagic longline gear.

Response: In this action, the flexible shortfin mako shark retention limit with a default of zero applies in the HMS bottom longline and gillnet fisheries for sharks, although those fisheries are not considered to be ICCAT fisheries, which are defined as fisheries for tuna or tuna-like species under the current ICCAT Convention. This approach is described in the responses to Comments 8 and 10. NMFS did not, however, implement a requirement that electronic monitoring be onboard in these fisheries in Amendment 11, because bottom longline and gillnet fisheries have minimal interactions with this species, and electronic monitoring was unnecessary to track such interactions effectively. The details of the bottom longline and gillnet requirements under Amendment 11 were referenced in this action in order to better explain the scope of the gears included under changes to the shortfin mako shark retention limit. However, NMFS did not propose or consider any changes to the electronic monitoring requirements in this action. The purpose of the action is to implement ICCAT Recommendation 21–09, which does not require any regulatory changes in the United States regarding electronic monitoring. Therefore, this comment is beyond the scope of this rulemaking.

Comment 22: NMFS received comments encouraging the Agency to respond to the 2021 petition from Defenders of Wildlife to list shortfin mako sharks as a threatened or endangered species under the ESA.

Response: NMFS is actively working on the 12-month finding to consider

listing shortfin mako sharks under the ESA and plans to release the determination soon. Because this comment refers to listing species under the ESA, this is beyond the scope of this rulemaking.

Comment 23: NMFS received comments that the United States should seek to extend no retention of shortfin mako sharks at ICCAT, rather than adhering to possible future retention according to Recommendation 21–09. Another comment suggested that the United States should submit a proposal at ICCAT to limit total mortality of South Atlantic shortfin mako sharks, including the same reporting requirements as in Recommendation 21–09.

Response: These comments are beyond the scope of this rulemaking. To the extent that these comments are suggesting development of U.S. proposals at ICCAT, U.S. proposals and priorities for ICCAT generally are discussed in the context of the U.S. ICCAT Advisory Committee meetings, which typically have at least one session open to the public.

Comment 24: NMFS received a comment calling for banning longline gear and all shark fisheries.

Response: National Standard 1 of the Magnuson-Stevens Act requires NMFS to prevent overfishing while achieving, on a continuing basis, optimum yield from each fishery for the U.S. fishing industry. NMFS continually monitors the federal shark fisheries and, based on the best available scientific information, takes action needed to conserve and manage the fisheries. The purpose of this action is to implement ICCAT Recommendation 21–09 regarding North Atlantic shortfin mako sharks, as necessary and appropriate pursuant to ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Recommendation 21–09 prohibits retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023, among other measures. The measures in Recommendation 21–09 were adopted as part of a rebuilding program for North Atlantic shortfin mako shark starting in 2022, with the objectives to ''end overfishing immediately and gradually achieve biomass levels sufficient to support maximum sustainable yield (MSY) by 2070 with a probability of a range of between 60 and 70 percent at least.'' Banning longline gear and shark fisheries is beyond the scope of this action.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective three days after publication in the **Federal Register**. Further delaying the effectiveness of these regulations could undermine the purpose of this action to implement ICCAT Recommendation 21–09, which was adopted in November 2021 and enters into force June 17, 2022. If effectiveness is delayed, retention of shortfin mako sharks will continue to be allowed in Atlantic HMS fisheries under the current regulations well past the entry into force date of, and contrary to the requirements of, this binding international measure. For all of these reasons, there is good cause to waive the 30-day delay in the date of effectiveness.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for, and objective of, the final action. This action is needed because the current HMS regulations allow retention of shortfin mako sharks in certain limited circumstances in HMS fisheries, which is inconsistent with the 2021 ICCAT recommendation. Under ATCA, NMFS is required to promulgate regulations as necessary and appropriate to implement binding ICCAT measures. This action is also needed in the non-ICCAT fisheries to provide consistency for the regulated community and for enforcement purposes, making the management measures more effective in addressing overfishing and starting to rebuild the stock.

The objective of this action is to implement ICCAT Recommendation 21–09 regarding North Atlantic shortfin mako sharks, as necessary and appropriate pursuant to ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Recommendation 21–09 prohibits retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023, among other measures. The measures in Recommendation 21–09 were adopted as part of a rebuilding program for North Atlantic shortfin mako shark starting in 2022, with the objectives to ''end overfishing immediately and gradually achieve biomass levels sufficient to support maximum sustainable yield (MSY) by 2070 with a probability of a range of between 60 and 70 percent at least.'' See Chapter 1 of the EA for a full description of the need for and objectives of the final rule.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received 22 written comments on the proposed rule and Draft EA during the public comment period. A summary of those comments and the agency's responses are described above. The comments did not refer to the IRFA or the economic impacts of the rule. One commenter (see Comment 3) noted that the rule would not have substantial economic impacts on commercial or for-hire fisheries or HMS tournaments.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes

for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than $8 million.

NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of $11 million and $8 million. Regarding those entities that would be directly affected by the final measures, the average annual revenue per active pelagic longline vessel is estimated to be $202,000, based on approximately 90 active vessels that produced an estimated $18.2 million in revenue in 2020, well below the NMFS small business size standard for commercial fishing businesses of $11 million. No single pelagic longline vessel has exceeded $11 million in revenue in recent years. Other non-longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities.

The final rule would apply to the 213 Shark Directed limited access permit (LAP) holders, 256 Shark Incidental LAP holders, and 4,055 HMS Charter/Headboat permit holders, based on 2021 data. Of those HMS Charter/Headboat permit holders, 3,021 obtained shark endorsements. In 2018 and 2019, 800 HMS for-hire trips targeting shortfin mako sharks were taken per year on average (7 percent on average of total HMS for-hire trips), from Maine to Virginia as captured in Large Pelagics Survey data. These trips were taken by, on average, 10 percent of HMS for-hire charter/headboat vessels. On average, there were 44 Atlantic HMS tournaments that targeted pelagic sharks (primarily shortfin mako sharks) in 2018 through 2021. There were approximately 1,555 directed shortfin mako shark trips in registered HMS tournaments on average in 2018 through 2021. On average, 26 federally-permitted dealers per year purchased shortfin mako sharks in 2018 through 2020. NMFS has determined that the preferred alternative would not likely directly affect any small organizations or small government jurisdictions defined under the RFA, nor would there be disproportionate economic impacts between large and small entities.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This action does not contain any new collection of information, reporting, or record-keeping requirements.

Section 604(a)(6) of the RFA requires agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

As described below, NMFS analyzed several different alternatives in this final rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

Alternative 1, the no action alternative, would not implement any new management measures in the commercial or for-hire shark fisheries to decrease mortality of shortfin mako sharks. In recent years, about 49,000 pounds dressed weight (dw) (22,000 kilograms dw) of shortfin mako sharks have been landed commercially on average from 2018 through 2020 and the commercial revenues from shortfin mako sharks have averaged approximately $96,000 per year. The number of pounds of shortfin mako shark landed, revenue, and number of pelagic longline vessels that landed shortfin mako sharks was lower in 2020 compared to 2018 and 2019 (average landings in 2018 and 2019 were 55,700 pounds dw (25,000 kilograms dw), average revenue was approximately $109,600 per year, and average number of pelagic longline vessels landing shortfin mako sharks was 53). Almost all of the shortfin mako shark commercial landings, based on dealer reports, were made by pelagic longline vessels. An average of 49 pelagic longline vessels landed shortfin mako sharks from 2018 through 2020. Therefore, the average annual revenue from shortfin mako shark landings per pelagic longline vessel is approximately $1,960 per year ($96,000/49) under the current regulations. For-hire shark fishing operations by HMS Charter/Headboat permit holders as well as HMS tournament operations would also remain the same. This alternative would result in no additional economic impacts on small entities associated with these fisheries in the short- or long-term.

Alternative 2, the preferred alternative, would implement a flexible shortfin mako shark retention limit with a default limit of zero. The limit of zero would be in place unless and until changed after considering inseason trip limit adjustment criteria (§ 635.24(a)(8)) and when consistent with ICCAT retention allowances pursuant to Recommendation 21–09. This would apply to commercial vessels issued a Shark Directed or Shark Incidental LAP and to HMS Charter/Headboat permit holders. Under a retention limit of zero, HMS for-hire fishermen and commercial vessels would be required to release all shortfin mako sharks that are alive at haulback and discard all shortfin mako sharks that are dead at haulback.

In recent years, about 49,000 pounds dw (22,000 kilograms dw) of shortfin mako sharks have been landed commercially on average from 2018 through 2020, and the commercial revenues from shortfin mako sharks have averaged approximately $96,000 fishery-wide per year. Almost all of the shortfin mako shark commercial landings, based on dealer reports, were made by pelagic longline vessels. An average of 49 pelagic longline vessels landed shortfin mako sharks from 2018 through 2020. Therefore, the average loss in annual revenue from shortfin mako shark landings per pelagic longline vessel that landed shortfin mako sharks would be approximately $1,960 per year ($96,000/49). However, the overall economic impacts associated with these reductions in revenue are not expected to be substantial, as shortfin mako sharks comprise less than one percent of total HMS ex-vessel revenues on average. Additionally, the magnitude of shortfin mako landings by other commercial gear types (bottom longline and gillnet) is very small.

This alternative would have minor economic costs on small entities in those commercial fisheries compared to the no action alternative because these measures would reduce the number of shortfin mako sharks landed and sold by these fishing vessels. Shortfin mako sharks are rarely a target species, however, and generate much less revenue overall than other more valuable target species. In for-hire fisheries and tournaments, retention would be prohibited, and fishermen would only be authorized to catch and release shortfin mako sharks. A retention limit of zero for shortfin mako sharks is likely to be a disincentive to fishing by some portion of the for-hire shark fishery, particularly those individuals that would otherwise have planned to target and retain shortfin mako sharks. Charter/Headboat operators may experience some decline in demand if shortfin mako sharks may not be retained, resulting in minor adverse economic impacts. For Atlantic

HMS tournaments, the 1,555 directed shortfin mako shark trips, on average, that take place in HMS tournaments would likely no longer take place, resulting in a loss of approximately $1.1 million in expenditures, out of an estimated $85.6 million in total HMS tournament expenditures by participating teams. Overall, this alternative would have minor economic costs on small entities in the short-term compared to the no action alternative.

During the fishing year, based on the inseason trip limit adjustment criteria (§ 635.24(a)(8)), and to the extent consistent with any future retention allowance that is determined by ICCAT pursuant to Recommendation 21–09, NMFS could increase the shortfin mako shark retention limit for the commercial fishery, the recreational fishery, or both, as appropriate. If the retention limit for the commercial and recreational fisheries is greater than zero, the current shortfin mako shark regulatory requirements, described under Alternative 1, would apply. This would result in no additional economic impacts on small entities associated with this fishery in the long-term compared to the no action alternative.

Alternative 3 would add shortfin mako sharks to the prohibited sharks species group to prohibit any catch or retention of shortfin mako sharks in commercial and recreational HMS fisheries. See Table 1, section D, in appendix A to 50 CFR part 635 (list of prohibited sharks), § 635.24(a)(5) (related vessel restrictions), and § 635.34(c) (criteria for adding species to, or removing species from, the prohibited shark species group). The overall economic impacts associated with reductions in revenue for the commercial and for-hire fisheries and HMS tournaments would be similar to those described under Alternative 2 and are not expected to be substantial, as shortfin mako sharks comprise less than one percent of total HMS ex-vessel revenues on average. This alternative would have minor economic costs on small entities in commercial fisheries because no shortfin mako sharks would be landed and sold by these fishing vessels under these measures. Shortfin mako sharks are rarely a target species, however, and generate less revenue overall than other more valuable target species. In for-hire fisheries and tournaments, retention would be prohibited, and fishermen would only be authorized to catch and release shortfin mako sharks. A prohibition on the retention of shortfin mako sharks is likely to be a disincentive for some portion of the for-hire shark fishery, particularly those individuals that would otherwise have planned to target and retain shortfin mako sharks. Charter/Headboat operators may experience some decline in demand, resulting in adverse economic impacts. For Atlantic HMS tournaments, the 1,555 directed shortfin mako shark trips, on average, that take place in HMS tournaments would likely no longer take place, resulting in a loss of approximately $1.1 million in expenditures, out of an estimated $85.6 million in total HMS tournament expenditures by participating teams. Overall, Alternative 3 would have minor economic costs on small entities in the short- and long-term.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a web page that also serves as small entity compliance guide (the guide) was prepared. This final rule and the guide are available on the HMS Management Division website at *https://www.fisheries.noaa.gov/action/proposed-changes-atlantic-shortfin-mako-shark-retention-limits* or by contacting Carrie Soltanoff at *carrie.soltanoff@noaa.gov* or 301–427–8503.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: June 27, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.20, revise paragraph (e)(6) to read as follows:

§ 635.20 Size limits.

* * * * *

(e) * * *

(6) For shortfin mako sharks landed when the recreational retention limit specified at § 635.22(c)(8) is greater than zero, males must be at least 71 inches (180 cm) fork length, and females must be at least 83 inches (210 cm) fork length.

* * * * *

■ 3. In § 635.21, revise paragraph (c)(1)(iv) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) * * *

(iv) Has pelagic longline gear on board, persons aboard that vessel are required to promptly release in a manner that causes the least harm any shortfin mako shark that is alive at the time of haulback, consistent with the requirements specified at paragraphs (a)(1) and (c)(6)(i) of this section. When the commercial retention limit specified at § 635.24(a)(4)(v) is greater than zero, any shortfin mako shark that is dead at the time of haulback may be retained provided the electronic monitoring system is installed and functioning in compliance with the requirements at § 635.9.

* * * * *

■ 4. In § 635.22, revise paragraph (c)(2) and add paragraph (c)(8) to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2) and (4): Atlantic blacktip, Gulf of Mexico blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, spinner, tiger, blue, common thresher, oceanic whitetip, porbeagle, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

* * * * *

(8) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks per vessel per trip will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8). Any retention within the trip limit is subject to the size limits described in § 635.20(e)(6).

* * * * *

■ 5. In § 635.24:

■ a. Add paragraph (a)(4) introductory text;

■ b. Revise paragraphs (a)(4)(i) and (iii);
■ c. Add paragraph (a)(4)(v);
■ d. Revise paragraphs (a)(8)(v) and (vi); and
■ e. Add paragraph (a)(8)(vii).

The additions and revisions read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(4) Additional retention limits for sharks. (i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (g)(6) and 635.22(c)(7).

* * * * *

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions at § 635.21(c)(1), (d)(5), and (g)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

* * * * *

(v) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

* * * * *

(8) * * *

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or

(vii) Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

* * * * *

■ 6. In § 635.27, revise paragraph (b)(4)(i) and add paragraph (b)(4)(v) to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(4) * * *

(i) The base annual quota for persons who collect LCS other than sandbar, SCS, pelagic sharks other than shortfin mako, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

* * * * *

(v) No persons may collect shortfin mako sharks under a display permit. Collection of shortfin mako sharks for research under EFPs and/or SRPs may be considered on a case-by-case basis and any associated mortality would be deducted from the shark research and display quota if shortfin mako shark retention is otherwise prohibited or counted against U.S. allowable retention levels established at ICCAT when retention is allowed.

* * * * *

[FR Doc. 2022–14116 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XC020]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Angling category northern area fishery for large medium and giant Atlantic bluefin tuna (BFT) (*i.e.,* ''trophy'' fish measuring 73 inches (185 cm) curved fork length or greater). This closure applies to Highly Migratory Species (HMS) Angling and Atlantic HMS Charter/Headboat permitted vessels when fishing recreationally for BFT. This action is necessary because landings data indicate the Angling category northern area trophy BFT subquota of 1.8 mt has been reached and exceeded.

DATES: Effective 11:30 p.m., local time, June 29, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

The 2022 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2022. The

Angling category season opened January 1, 2022, and continues through December 31, 2022. The Angling category baseline quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ; the ''northern area''); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Angling Category Large Medium and Giant Northern Area ''Trophy'' Fishery Closure

Based on landings data from the NMFS Automated Catch Reporting System, as well as average catch rates and anticipated fishing conditions, NMFS has determined that the codified Angling category northern area trophy BFT subquota of 1.8 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT north of 39°18′ N lat. by persons aboard HMS Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally) must cease at 11:30 p.m. local time on June 29, 2022. This closure will remain effective through December 31, 2022. This action applies to HMS Angling and HMS Charter/Headboat permitted vessels when fishing recreationally for BFT, and is taken consistent with the regulations at § 635.28(a)(1). This action is intended to prevent overharvest of the Angling category northern area trophy BFT subquota. NMFS previously closed the 2022 trophy BFT fishery in the southern area on February 12, 2022 (87 FR 8983, February 17, 2022) and in the Gulf of Mexico area on May 17, 2022 (87 FR 30838, May 20, 2022). Therefore, with this closure of the northern area trophy BFT fishery, the Angling category trophy BFT fishery will be closed in all areas for 2022.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches (185 cm) and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling 978–281–9260. HMS Angling and HMS Charter/Headboat permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

HMS Angling and Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the northern area trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the Assistant Administrator for NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 28, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14142 Filed 6–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No: 220627–0142; RTID 0648–XB877]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2022–2023 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year, which runs from July 1, 2022, through June 30, 2023. This final rule will prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest will be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine will be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan, or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The annual catch limit for the 2022–2023 Pacific sardine fishing year is 4,274 metric tons. This final rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective June 30, 2022.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619–2052, *Taylor.Debevec@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the

Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*

This final rule implements the annual catch levels, reference points, and management measures for the 2022–2023 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 9, 2022. The proposed rule for this action included additional background on the specifications and details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (87 FR 27557).

This final rule implements an OFL of 5,506 metric tons (mt) and an ABC/annual catch limit (ACL) of 4,274 mt, based on CPS FMP control rules and a biomass estimate of Pacific sardine of 27,369 mt. This biomass estimate is from the 2022 update stock assessment, which was identified by the Council's Scientific and Statistical Committee to represent the best scientific information available for management of Pacific sardine. Per the CPS FMP, because the estimated biomass is less than 150,000 mt (*i.e.,* the Rebuilding target and CUTOFF in the harvest guideline control rule), the primary directed fishery is set to 0 mt, meaning there is no primary directed fishery for Pacific sardine. This is the eighth consecutive year the primary directed fishery has been closed. Because the estimated biomass is below the minimum stock size threshold (50,000 mt) the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight. Although these management measures, triggered by the FMP, are expected to keep catch far below the ACL as they have done in recent history, this rule also implements an annual catch target (ACT) of 3,800 mt and implements management measures intended to ensure harvest opportunity throughout the year.

A summary of the 2022–2023 fishing year specifications can be found in Table 1, and management measures are summarized in the list below Table 1.

TABLE 1—HARVEST SPECIFICATIONS FOR THE 2022–2023 SARDINE FISHING YEAR IN METRIC TONS (mt)

Biomass estimate	OFL	ABC	HG	ACL	ACT
27,369	5,506	4,274	0	4,274	3,800

Following are the management measures for commercial sardine harvest during the 2022–2023 fishing year:

(1) If landings in the live bait fishery reach 1,800 mt of Pacific sardine, then a 1 mt per-trip limit of sardine would apply to the live bait fishery.

(2) An incidental per-landing limit of 20 percent (by weight) of Pacific sardine applies to other CPS primary directed fisheries (*e.g.,* Pacific mackerel).

(3) If the ACT of 3,800 mt is attained, then a 1-mt per-trip limit of Pacific sardine landings would apply to all CPS fisheries (*i.e.,* (1) and (2) would no longer apply).

(4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

All sources of catch, including any exempted fishing permit (EFP) set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, will be accounted for against the ACT and ACL. At the April 2022 Council meeting, the Council approved 830 mt of the ACL for three EFP proposals to support stock assessments for Pacific sardine. If the effective date of this final rule is after July 1, 2022, any Pacific sardine harvested between July 1, 2022, and the effective date will count toward the 2022–2023 ACT.

The NMFS West Coast Regional Administrator will publish notification in the **Federal Register** to announce when catch reaches the incidental limits as well as any resulting changes to allowable incidental catch percentages. Additionally, to ensure the regulated community is informed of any closure, NMFS will make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

Comments and Responses

On May 9, 2022, NMFS published a proposed rule for this action and solicited public comments through May 24, 2022 (87 FR 27557). NMFS received two public comments—one from the industry group California Wetfish Producers Association (Association) and one from the environmental group Oceana. The Association supported the proposed rule in its entirety. After considering the public comments, NMFS made no changes from the proposed rule. NMFS summarizes and responds to the comment from Oceana below.

Comment: Oceana supported the prohibition on directed fishing for Pacific sardine, but recommended that NMFS: use a different E (maximum sustained yield (MSY)—fishing rate) value to calculate the OFL and ABC; use survey results without the distribution factor instead of the model-based stock assessment to set limits, or incorporate additional precautionary buffers if using the assessment; set the ACL no higher than 800 mt; limit the incidental catch allowance to no more than 10 percent; and reduce allowable catch levels for the live bait fishery. In addition to those recommendations on the proposed rule, Oceana also recommended what they state are necessary reforms to various aspects of Pacific sardine management. Changes to the management framework of Pacific sardine and to the Pacific sardine harvest control rules are set in the CPS FMP and are beyond the scope of this rulemaking. These include Oceana's recommendations to: revise the E_{MSY} formula; change the fishing season dates to January 1–December 31 to align with using survey data estimates; change the distribution factor; increase the cutoff factor; and coordinate international management of the fishery. NMFS will consider these recommendations as appropriate in future related discussions on sardine management. But because they are not within the scope of this action, they will not be addressed with a response here.

Response: As it relates to the comment that NMFS should use an E_{MSY} of 5 percent to calculate the OFL and ABC, NMFS has determined that the OFL and ABC being implemented through this action will prevent

overfishing and are supported by the best scientific information available. Oceana claimed that the E_{MSY} fishing rate and distribution factor NMFS used ''are overestimated, resulting in an OFL that does not prevent overfishing;'' however, we note that overfishing has never occurred in this fishery. Additionally, the reference points proposed for the 2022–2023 fishing year were recommended by the Council's SSC and determined by them to represent the best available science and are based on the formulas in the CPS FMP, including the formula adopted for calculating E_{MSY}. Regarding recent Council discussions related to E_{MSY}, NMFS notes that the Council's SSC—the scientific advisory body that is responsible for recommending changes to E_{MSY}—can (as it has done in the past) recommend changes to E_{MSY} at any time if the best available science warrants such a revision, and it has not determined that a change is necessary at this time.

NMFS is aware of the 2019 scientific publication referenced by Oceana in their comment letter and of ongoing Council discussions related to E_{MSY}. NMFS is committed to participating in discussions about new science and whether that science justifies a change to how E_{MSY} is calculated for management purposes. Regarding the 2019 paper mentioned by Oceana that was authored by researchers at the SWFSC, NMFS notes that research related to the appropriate temperature index to inform E_{MSY} is ongoing. NMFS has not yet determined whether, based on that paper, a change in how E_{MSY} is calculated is necessary for management purposes. NMFS will continue to examine whether this new publication warrants a change in management; however, as previously stated, NMFS has determined that the reference points set through this action are based on the best scientific information available.

As it relates to the comment that NMFS base limits on acoustic trawl survey results (without the distribution factor) instead of the model-based stock assessment, this is out of the scope of this action; additionally this methodology has not been scientifically analyzed and therefore cannot be considered the best scientific information available at this time. NMFS disagrees with Oceana's alternative suggestion (in the event the model is still used instead of the survey data, per Oceana's initial suggestion) to increase the buffer between the OFL and ABC to account for uncertainty in the 2022 stock assessment update. NMFS disagrees with this because the stock assessment was endorsed by the Council's SSC as the best scientific information available for management, and NMFS determined that it represents the best available science for management as well. Oceana points to uncertainties in the stock assessment, but the ABC being implemented through this action is from the Council's SSC, which is responsible for making ABC recommendations to the Council, and which already incorporates a buffer to account for uncertainty. The buffer between OFL and ABC for this year's fishing season is appropriately smaller than the buffer between OFL and ABC for last year's fishing season because the SSC determined that this year's assessment is less uncertain than last year's assessment due to the addition of new data. NMFS also notes that, contrary to Oceana's assertions, there have been no ''indications of overfishing in several previous years'' that would warrant a more precautionary approach to setting the ABC. NMFS has therefore determined that it is not necessary to further reduce the ABC from the OFL to prevent overfishing.

NMFS disagrees with Oceana's recommendation that the ACL should be no higher than 800 mt. Further reductions in catch levels beyond those recommended by the Council are unnecessary at this time to rebuild the stock or for other reasons. The OFL/ABC/ACL were all calculated in alignment with the rebuilding plan. The ACL should be viewed in the context of the OFL of 5,506 mt and the ABC of 4,274 mt, which takes into account scientific uncertainty surrounding the OFL. The reference points being implemented through this action were recommended by the Council based on the control rules in the FMP and were endorsed by the Council's SSC as the best scientific information available for setting the 2022–2023 harvest specifications for Pacific sardine. In addition, the management measures adopted by the Council, including an ACT that was set even lower than the ACL (3,800 mt), are more than adequate to ensure catch does not exceed the ACL/ABC and OFL. The reference points implemented through this action should also be viewed in the context of the non-discretionary harvest restrictions already in place, pursuant to the CPS FMP, which generally restrict the fishery from catching the full ACL. These non-discretionary restrictions include the continued closure of the primary directed fishery (*i.e.,* the largest fishery that takes the majority of Pacific sardine catch) and restrictions on incidental harvest of Pacific sardine in other CPS fisheries (which are currently less than half of typical incidental limits). The Council considered the overfished status of Pacific sardine, as well as the uncertainty around the 2022 update assessment, and incorporated precautionary measures in their recommendations to NMFS to account for those factors. Those precautionary measures included: (1) deeming the assessment Tier 2; (2) using a P* value of 0.4; (3) reducing the ACT from the ACL; (4) reducing the EFP allowance from the requested amount; and (5) incorporating accountability measures. These accountability measures include: (1) limiting live bait landings to 1 mt per landing once 1,800 mt of sardine is attained; (2) imposing a per-trip limit of 1 mt of sardine in all CPS fisheries once the ACT is attained; and (3) implementing an incidental per-landing allowance of 2 mt in non-CPS fisheries until the ACL is reached.

As it relates to the comment that NMFS set the incidental catch allowance at 10 percent, NMFS notes that all harvest, regardless of how it is taken or at what level (*i.e.* 10 percent or 20 percent), is accounted for under the OFL/ABC/ACL/ACT for this action, and these levels have been determined to prevent overfishing of Pacific sardine and support the rebuilding of the stock. Additionally, reducing the incidental catch allowance is not necessary to ensure these reference points are not exceeded, therefore NMFS does not see a justification to restrict this sector further than the low catch allowance already in place.

Lastly, with regard to reducing allowable catch levels for the live bait fishery, Oceana does not outline to what level or why restricting this sector beyond the ways this sector is already restricted is necessary. This action implements a measure providing that, if the live bait fishery attains 1,800 mt, there will be a 1-mt trip limit on the live bait fishery; this measure provides for another precautionary step to ensure the ACL is not exceeded.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the MSA, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness of these final harvest specifications for the 2022–2023 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2022. The contents of this rule are based on the best scientific

information available on the population status of Pacific sardine, which became available at that April 2022 meeting. Making these final specifications effective on July 1, the first day of the fishing year, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on primary directed fishing for Pacific sardine for the 2022–2023 fishing year because the sardine biomass has dropped below the CUTOFF. The purpose of the CUTOFF in the FMP, and for prohibiting a primary directed fishery when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. A delay of a full 30 days in the date of effectiveness for this rule would result in the re-opening of the primary directed commercial fishery on July 1.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen have already been operating under a prohibition of the primary directed fishery for years, and are aware that the Council recommended that primary directed commercial fishing be prohibited again for the 2022–2023 fishing year, and are fully prepared to comply with the prohibition.

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule (87 FR 27557, May 9, 2022) and is not repeated here. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the Council's tribal representative, who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

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

Dated: June 27, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–14122 Filed 6–30–22; 8:45 am]

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Proposed Rules

Federal Register
Vol. 87, No. 126
Friday, July 1, 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 327

RIN 3064–AF83

Assessments, Revised Deposit Insurance Assessment Rates

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule that would increase initial base deposit insurance assessment rates by 2 basis points, beginning with the first quarterly assessment period of 2023. The proposal would increase the likelihood that the reserve ratio would reach the required minimum level of 1.35 percent by the statutory deadline of September 30, 2028, consistent with the FDIC's Amended Restoration Plan, and is intended to support growth in the Deposit Insurance Fund (DIF or fund) in progressing toward the FDIC's long-term goal of a 2 percent Designated Reserve Ratio (DRR).

DATES: Comments must be received no later than August 20, 2022.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF83 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF83, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* 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 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Michael Spencer, Associate Director, Financial Risk Management Branch, 202–898–7041, *michspencer@fdic.gov;* Ashley Mihalik, Chief, Banking and Regulatory Policy, 202–898–3793, *amihalik@fdic.gov;* Kayla Shoemaker, Senior Policy Analyst, 202–898–6962, *kashoemaker@fdic.gov;* Sheikha Kapoor, Senior Counsel, 202–898–3960, *skapoor@fdic.gov;* Ryan McCarthy, Senior Attorney, 202–898–7301, *rymccarthy@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Legal Authority and Policy Objectives

The FDIC, under its general rulemaking authority in Section 9 of the Federal Deposit Insurance Act (FDI Act), and its specific authority under Section 7 of the FDI Act to set assessments, is proposing to increase initial base deposit insurance assessment rates by 2 basis points, effective January 1, 2023, and applicable to the first quarterly assessment period of 2023 (*i.e.,* January 1–March 31, 2023).[1]

The proposed increase in initial base assessment rates is intended to achieve two objectives. First, the proposal is intended to increase assessment revenue in order to build the DIF, which is used to pay deposit insurance in the event of failure of an insured depository institution (IDI), and to restore the reserve ratio to the statutory minimum of 1.35 percent within the deadline set by statute, consistent with the Restoration Plan, as amended by the FDIC Board of Directors (Board) on June 21, 2022 (Amended Restoration Plan).[2] While the banking industry has remained a source of strength for the economy and the DIF has experienced low losses from IDI failures in recent years, slowing growth in the fund balance combined with continued elevated estimated insured deposit levels, described below, have decreased the likelihood that the reserve ratio will meet the statutory minimum by September 30, 2028.[3] The proposal would increase the likelihood that the reserve ratio will meet the statutory minimum by the required deadline and reduce the likelihood that the FDIC would need to raise assessment rates during a potential future period of banking industry stress.

Second, the proposed change in assessment rates is further intended to support growth in the DIF in progressing toward the 2 percent DRR. Therefore, the proposed assessment rate schedules would remain in effect unless and until the reserve ratio meets or exceeds 2 percent, absent further Board action. This continued growth in the DIF is intended to reduce the likelihood that the FDIC would need to consider a potentially pro-cyclical assessment rate increase, and to increase the likelihood of the DIF remaining positive through potential future periods of significant losses due to bank failures, consistent with the FDIC's long-term fund management plan.[4] A sufficiently large fund is a necessary precondition to maintaining a positive fund balance during a banking crisis and allowing for long-term, steady assessment rates. Accomplishing these objectives also

[1] *See* 12 U.S.C. 1817 and 1819.

[2] Under the FDI Act, a restoration plan must restore the reserve ratio to at least 1.35 percent within 8 years of establishing the restoration plan, absent extraordinary circumstances. *See* 12 U.S.C. 1817(b)(3)(E). The reserve ratio is calculated as the ratio of the net worth of the DIF to the value of the aggregate estimated insured deposits at the end of a given quarter. *See* 12 U.S.C. 1813(y)(3).

[3] 12 U.S.C. 1817(b)(3)(E)(ii). As used in this proposed rule, the term ''bank'' is synonymous with the term ''insured depository institution'' as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

[4] *See* 75 FR 66273 (Oct. 27, 2010) and 76 FR 10672 (Feb. 25, 2011).

would continue to ensure public confidence in federal deposit insurance.

II. Background

A. Restoration Plan

Extraordinary growth in insured deposits during the first and second quarters of 2020 caused the DIF reserve ratio to decline below the statutory minimum of 1.35 percent.[5] As of June 30, 2020, the reserve ratio had fallen below the statutory minimum and stood at 1.30 percent. The FDI Act requires that the Board adopt a restoration plan when the DIF reserve ratio falls below the statutory minimum of 1.35 percent or is expected to within 6 months.[6] On September 15, 2020, the Board adopted the Restoration Plan to restore the DIF to at least 1.35 percent by September 30, 2028.[7]

In its June 21, 2022, semiannual update to the Board, FDIC projections of the reserve ratio under different scenarios reflected that the reserve ratio is at risk of not reaching 1.35 percent by September 30, 2028, the end of the statutory 8-year period.[8] The scenarios are based on updated data and analysis and incorporate different rates of insured deposit growth and weighted average assessment rates, including sustained elevated insured deposit balances and lower assessment rates than previously anticipated. On June 21, 2022, the Board approved the Amended Restoration Plan, which reflects an increase in initial base deposit insurance assessment rates of 2 basis points, beginning with the first quarterly assessment period of 2023. Accordingly, the FDIC is concurrently publishing in the **Federal Register** an Amended Restoration Plan.

B. Designated Reserve Ratio

The FDI Act requires that the Board designate a reserve ratio for the DIF and publish the DRR before the beginning of each calendar year.[9] The Board must set the DRR in accordance with its analysis of certain statutory factors: risk of losses to the DIF; economic conditions generally affecting IDIs; preventing sharp swings in assessment rates; and any other factors that the Board determines to be appropriate.[10]

In 2010, the FDIC proposed and later adopted a comprehensive, long-term management plan for the DIF with the following goals: (1) reduce the pro-cyclicality in the existing risk-based assessment system by allowing moderate, steady assessment rates throughout economic and credit cycles; and (2) maintain a positive fund balance even during a banking crisis by setting an appropriate target fund size and a strategy for assessment rates and dividends.[11] Based on the FDIC's experience through two banking crises, the analysis concluded that a long-term moderate, steady assessment rate of 5.29 basis points would have been sufficient to prevent the fund from becoming negative during the crises.[12] The FDIC also found that the fund reserve ratio would have had to exceed 2 percent before the onset of the last two crises to achieve these results.[13]

The FDIC's comprehensive, long-term fund management plan combines the moderate, steady assessment rate with a DRR of 2 percent. The Board set the DRR at 2 percent in 2010 and has voted annually since then to maintain the 2 percent DRR, most recently in December 2021.[14] The FDIC views the DRR as a long-range, minimum goal that will allow the fund to grow sufficiently large during times of favorable banking conditions, increasing the likelihood that the DIF will remain positive throughout periods of significant losses due to bank failures. Additionally, in lieu of dividends, the long-term plan prescribes progressively lower assessment rates that will become effective when the reserve ratio exceeds 2 percent and 2.5 percent. Because analysis shows that a reserve ratio higher than 2 percent increases the chance that the fund will remain positive during a crisis, the 2 percent DRR should not be treated as a cap on the size of the fund.[15]

C. Deposit Insurance Assessments

Pursuant to Section 7 of the FDI Act, the FDIC has established a risk-based assessment system through which it charges all IDIs an assessment amount for deposit insurance.[16]

Under the FDIC's regulations, an IDI's assessment is equal to its assessment base multiplied by its risk-based assessment rate.[17] Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[18] An IDI's assessment rate is determined each quarter based on supervisory ratings and information collected on the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as appropriate. An IDI's assessment rate is calculated using different methods based on whether the IDI is a small, large, or highly complex institution.[19] For assessment purposes, a small bank is generally defined as an institution with less than $10 billion in total assets, a large bank is generally defined as an institution with $10 billion or more in total assets, and a highly complex bank is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company.[20]

Assessment rates for established small banks are calculated based on eight risk measures that are statistically significant in predicting the probability of an institution's failure over a three-year horizon.[21]

Large and highly complex institutions are assessed using a scorecard approach

[5] *See* 12 U.S.C. 1817(b)(3)(B).

[6] *See* 12 U.S.C. 1817(b)(3)(E).

[7] *See* 85 FR 59306 (Sept. 21, 2020).

[8] *See* FDIC Restoration Plan Semiannual Update, June 21, 2022. Available at *https://www.fdic.gov/news/board-matters/2022/2022-06-21-notice-sum-b-mem.pdf.*

[9] Section 7(b)(3)(A) of the FDI Act, 12 U.S.C. 1817(b)(3)(A). The DRR is expressed as a percentage of estimated insured deposits.

[10] Section 7(b)(3)(C) of the FDI Act, 12 U.S.C. 1817(b)(3)(C).

[11] *See* 75 FR 66272 (Oct. 27, 2010) (October 2010 NPR) and 76 FR 10672 (Feb. 25, 2011).

[12] *See* 75 FR 66273 and 76 FR 10675.

[13] The analysis set out in the October 2010 NPR sought to determine what assessment rates would have been needed to maintain a positive fund balance during the last two crises. This analysis used an assessment base derived from domestic deposits to calculate assessment income. The Dodd-Frank Wall Street Reform and Consumer Protection Act, however, required the FDIC to change the assessment base to average consolidated total assets minus average tangible equity. In the December 2010 final rule establishing a 2 percent DRR, the FDIC undertook additional analysis to determine how the results of the original analysis would change had the new assessment base been in place from 1950 to 2010. Both the analyses in the October 2010 NPR and the December 2010 final rule show that the fund reserve ratio would have needed to be approximately 2 percent or more before the onset of the crises to maintain both a positive fund balance and stable assessment rates. The updated analysis in the December 2010 final rule, like the analysis in the October 2010 NPR, assumed, in lieu of dividends, that the long-term industry average nominal assessment rate would be reduced by 25 percent when the reserve ratio reached 2 percent, and by 50 percent when the reserve ratio reached 2.5 percent. Eliminating dividends and reducing rates successfully limits rate volatility whichever assessment base is used. *See* 75 FR 66273 and 75 FR 79288 (Dec. 20, 2010) (December 2010 final rule).

[14] *See* 75 FR 79286 (Dec. 20, 2010), codified at 12 CFR 327.4(g), and 86 FR 71638 (Dec. 17, 2021).

[15] *See* 75 FR 66273 and 75 FR 79287.

[16] *See* 12 U.S.C. 1817(b).

[17] *See* 12 CFR 327.3(b)(1).

[18] *See* 12 CFR 327.5.

[19] *See* 12 CFR 327.16(a) and (b).

[20] As used in this proposed rule, the term ''small bank'' is synonymous with the term ''small institution'' and the term ''large bank'' is synonymous with the term ''large institution'' or ''highly complex institution,'' as the terms are defined in 12 CFR 327.8(e), (f), and (g), respectively.

[21] *See* 12 CFR 327.16(a); *see also* 81 FR 32180 (May 20, 2016).

that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large or highly complex bank poses to the DIF.[22]

All institutions are subject to adjustments to their assessment rates for certain liabilities that can increase or reduce loss to the DIF in the event the bank fails.[23] In addition, the FDIC may adjust a large bank's total score, which is used in the calculation of its assessment rate, based upon significant risk factors not adequately captured in the appropriate scorecard.[24]

D. Current Assessment Rate Schedules

In 2011, consistent with the FDIC's long-term fund management plan, the FDIC adopted lower, moderate assessment rates that would go into effect when the DIF reserve ratio reached 1.15 percent.[25] In 2016, the FDIC amended its rules to refine the deposit insurance assessment system for established small IDIs (*i.e.,* small IDIs that have been federally insured for at least five years) and preserved the lower overall range of initial base assessment rates adopted in 2011 pursuant to the long-term fund management plan.[26] Those rates are currently in effect and are detailed in the sections that follow. In addition, the Board is authorized to uniformly increase or decrease the total base rate assessment schedule up to a maximum of 2 basis points or a fraction thereof, as the Board deems necessary, without further rulemaking.[27]

Established Small Institutions and Large and Highly Complex Institutions

Current initial base assessment rates for established small institutions and large and highly complex institutions are set forth in Table 1 below.[28]

TABLE 1—CURRENT INITIAL BASE ASSESSMENT RATE SCHEDULE APPLICABLE TO ESTABLISHED SMALL INSTITUTIONS AND LARGE AND HIGHLY COMPLEX INSTITUTIONS [1]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	3 to 16	6 to 30	16 to 30	3 to 30

[1] All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

An institution's total base assessment rate may vary from the institution's initial base assessment rate as a result of possible adjustments for certain liabilities that can increase or reduce loss to the DIF in the event the institution fails.[29] After applying all possible adjustments, the current minimum and maximum total base assessment rates for established small institutions and large and highly complex institutions are set out in Table 2 below.[30]

TABLE 2—CURRENT TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) APPLICABLE TO ESTABLISHED SMALL INSTITUTIONS AND LARGE AND HIGHLY COMPLEX INSTITUTIONS [1] [2]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	3 to 16	6 to 30	16 to 30	3 to 30
Unsecured Debt Adjustment [3]	−5 to 0	−5 to 0	−5 to 0	−5 to 0
Brokered Deposit Adjustment	N/A	N/A	N/A	0 to 10
Total Base Assessment Rate	1.5 to 16	3 to 30	11 to 30	1.5 to 40

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

[3] The unsecured debt adjustment cannot exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus, for example, an insured depository institution with an initial base assessment rate of 3 basis points will have a maximum unsecured debt adjustment of 1.5 basis points and cannot have a total base assessment rate of lower than 1.5 basis points.

[22] *See* 12 CFR 327.16(b); *see also* 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

[23] *See* 12 CFR 327.16(e).

[24] *See* 12 CFR 327.16(b)(3); *see also* Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions, 76 FR 57992 (Sept. 19, 2011).

[25] See 76 FR 10683–10688.

[26] *See* 81 FR 32189–32191.

[27] *See* 12 CFR 327.10(f)(3). However, the lowest initial base assessment rate cannot be negative.

[28] *See* 12 CFR 327.10(b)(1). An established insured depository institution is a bank or savings association that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed. *See* 12 CFR 327.8(k).

[29] *See* 12 CFR 327.16(e).

[30] *See* 12 CFR 327.10(b)(2).

The assessment rates currently applicable to established small institutions and large and highly complex institutions in Tables 1 and 2 above will remain in effect unless and until the reserve ratio meets or exceeds 2 percent.[31]

New Small Institutions

Current assessment rates applicable to new small institutions are set forth in Tables 3 and 4 below.[32] New small institutions will remain subject to the assessment schedules in Tables 3 and 4 when the reserve ratio reaches 2 percent or 2.5 percent.[33] As stated in the 2010 NPR describing the long-term comprehensive fund management plan, and adopted in the 2011 Final Rule, the lower assessment rate schedules applicable when the reserve ratio reaches 2 percent and 2.5 percent do not apply to any new depository institutions; these institutions will remain subject to the assessment rates shown below, until they no longer are new depository institutions.[34]

TABLE 3—CURRENT INITIAL BASE ASSESSMENT RATE SCHEDULE APPLICABLE TO NEW SMALL INSTITUTIONS [1]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	7	12	19	30

[1] All amounts for all risk categories are in basis points annually.

TABLE 4—CURRENT TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) APPLICABLE TO NEW SMALL INSTITUTIONS [1] [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	7	12	19	30
Brokered Deposit Adjustment (added)	N/A	0 to 10	0 to 10	0 to 10
Total Base Assessment Rate	7	12 to 22	19 to 29	30 to 40

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.
[2] All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

Insured Branches of Foreign Banks

Current assessment rates applicable to insured branches of foreign banks are set forth in Table 5 below.[35] The rates in Tables 5 will remain in effect unless and until the reserve ratio meets or exceeds 2 percent.[36]

TABLE 5—CURRENT INITIAL AND TOTAL BASE ASSESSMENT RATE SCHEDULE [1] APPLICABLE TO INSURED BRANCHES OF FOREIGN BANKS [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial and Total Assessment Rate	3 to 7	12	19	30

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.
[2] All amounts for all risk categories are in basis points annually. Initial and total base rates that are not the minimum or maximum rate will vary between these rates.

III. The Proposed Rule

A. Overview of the Proposal

The FDIC is proposing to increase initial base deposit insurance assessment rates uniformly by 2 basis points, beginning with the first quarterly assessment period of 2023. The proposed change is intended to increase assessment revenue in order to raise the reserve ratio to the minimum threshold of 1.35 percent within 8 years of the Restoration Plan's initial establishment, as required by statute, and consistent with the Amended Restoration Plan, and is intended to support growth in the DIF in progressing toward the 2 percent DRR. The proposed assessment rate schedules would remain in effect unless and until the reserve ratio meets or exceeds 2 percent, absent further Board action.

The proposed change in assessment rates would bring the average assessment rate close to the moderate steady assessment rate that would have been required to maintain a positive DIF balance from 1950 to 2010, identified as part of the long-term, comprehensive fund management plan in 2011.[37] This continued growth in the DIF is intended to reduce the likelihood that the FDIC would need to consider a potentially pro-cyclical assessment rate increase, and to increase the likelihood of the DIF remaining positive through potential

[31] In lieu of dividends, and pursuant to the FDIC's authority to set assessments, the progressively lower initial base and total base assessment rates set forth in 12 CFR 327.10(c) and (d) will come into effect without further action by the Board when the fund reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively.

[32] *See* 12 CFR 327.10(e)(1)(iii)(A) and (B). Subject to exceptions, a new depository institution is a bank or savings association that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed. *See also* 12 CFR 327.8(j).

[33] *See* 12 CFR 327.10(e)(1)(iii)(B).

[34] *See* 75 FR 66283 and 76 FR 10686.

[35] *See* 12 CFR 327.10(e)(2)(i).

[36] In lieu of dividends, and pursuant to the FDIC's authority to set assessments, the progressively lower initial base and total base assessment rates set forth in 12 CFR 327.10(e)(2)(ii) and (iii) will come into effect without further action by the Board when the fund reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively.

[37] *See* 75 FR 66273 and 76 FR 10675.

future periods of significant losses due to bank failures. In lieu of dividends, the progressively lower assessment rate schedules currently in the regulation will remain unchanged and will come into effect without further action by the Board when the fund reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively.[38] The FDIC is not proposing changes to the rate schedules that come into effect when the reserve ratio reaches 2 and 2.5 percent.

The FDIC proposes to retain the Board's flexibility to adopt higher or lower total base assessment rates, provided that the Board cannot increase or decrease rates from one quarter to the next by more than 2 basis points, and cumulative increases and decreases cannot be more than 2 basis points higher or lower than the total base assessment rates set forth in the assessment rate schedules.[39] Retention of this flexibility will continue to allow the Board to act in a timely manner to fulfill its mandate to raise the reserve ratio, particularly in light of the uncertainty related to insured deposit growth and the economic outlook.

B. Proposed Assessment Rate Schedules

Proposed Assessment Rates for Established Small Institutions and Large and Highly Complex Institutions

Pursuant to the FDIC's authority to set assessments, the proposed initial and total base assessment rates applicable to established small institutions and large and highly complex institutions set forth in Tables 6 and 7 below would take effect beginning with the first quarterly assessment period of 2023.

TABLE 6—PROPOSED INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT [1]

	Established small institutions			Large & highly complex institutions
	CAMELS Composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	5 to 18	8 to 32	18 to 32	5 to 32

[1] All amounts are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

An institution's total base assessment rate may vary from the institution's initial base assessment rate as a result of possible adjustments for certain liabilities that can increase or reduce loss to the DIF in the event the institution fails.[40] These adjustments do not reflect a change and are consistent with the current assessment regulations. After applying all possible adjustments, the proposed minimum and maximum total base assessment rates applicable to established small institutions and large and highly complex institutions are set out in Table 7 below.

TABLE 7—PROPOSED TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) [1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT [2]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	5 to 18	8 to 32	18 to 32	5 to 32
Unsecured Debt Adjustment [3]	−5 to 0	−5 to 0	−5 to 0	−5 to 0
Brokered Deposit Adjustment	N/A	N/A	N/A	0 to 10
Total Base Assessment Rate	2.5 to 18	4 to 32	13 to 32	2.5 to 42

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

[3] The unsecured debt adjustment cannot exceed the lesser of 5 basis points or 50 percent of an insured depository institution's initial base assessment rate; thus, for example, an insured depository institution with an initial base assessment rate of 5 basis points will have a maximum unsecured debt adjustment of 2.5 basis points and cannot have a total base assessment rate of lower than 2.5 basis points.

The proposed rates applicable to established small institutions and large and highly complex institutions in Tables 6 and 7 above would remain in effect unless and until the reserve ratio meets or exceeds 2 percent. In lieu of dividends, and pursuant to the FDIC's authority to set assessments, progressively lower initial and total base assessment rate schedules applicable to established small institutions and large and highly complex institutions as currently set forth in 12 CFR 327.10(c) and (d) will come into effect without further action by the Board when the fund reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively.[41] The FDIC is not proposing changes to these progressively lower assessment rate schedules.

Proposed Assessment Rates for New Small Institutions

Pursuant to the FDIC's authority to set assessments, the initial and total base assessment rates applicable to new small institutions set forth in Tables 8 and 9 below would take effect beginning with the first quarterly assessment

[38] *See* 12 CFR 327.10(c) and (d).

[39] *See* 12 CFR 327.10(f).

[40] *See* 12 CFR 327.16(e).

[41] *See* 12 CFR 327.10(c) and (d).

period of 2023. New small institutions would remain subject to the assessment schedules in Tables 8 and 9, even when the reserve ratio reaches 2 percent or 2.5 percent, until they no longer were new depository institutions, consistent with current assessment regulations.

TABLE 8—PROPOSED INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023 AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS, APPLICABLE TO NEW SMALL INSTITUTIONS [1]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	9	14	21	32

[1] All amounts for all risk categories are in basis points annually.

TABLE 9—PROPOSED TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) [1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023 AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS, APPLICABLE TO NEW SMALL INSTITUTIONS [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	9	14	21	32
Brokered Deposit Adjustment (added)	N/A	0 to 10	0 to 10	0 to 10
Total Base Assessment Rate	9	14 to 24	21 to 31	32 to 42

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

Proposed Assessment Rates for Insured Branches of Foreign Banks

Pursuant to the FDIC's authority to set assessments, the initial and total base assessment rates applicable to insured branches of foreign banks set forth in Table 10 below would take effect beginning with the first quarterly assessment period of 2023.

TABLE 10—PROPOSED INITIAL AND TOTAL BASE ASSESSMENT RATE SCHEDULE [1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT, APPLICABLE TO INSURED BRANCHES OF FOREIGN BANKS [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial and Total Assessment Rate	5 to 9	14	21	32

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Initial and total base rates that are not the minimum or maximum rate will vary between these rates.

The proposed rates applicable to insured branches of foreign banks in Table 10 above would remain in effect unless and until the reserve ratio meets or exceeds 2 percent. In lieu of dividends, and pursuant to the FDIC's authority to set assessments, progressively lower initial and total base assessment rate schedules applicable to insured branches of foreign banks as currently set forth in 12 CFR 327.10(e)(2)(ii) and (iii) will come into effect without further action by the Board when the fund reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively. The FDIC is not proposing changes to these progressively lower assessment rate schedules.

C. Conforming, Technical, and Other Amendments to the Assessment Regulations

Conforming Amendments

The FDIC is proposing conforming amendments in §§ 327.10 and 327.16 of the FDIC's assessment regulations to effectuate the modifications described above. These conforming amendments would ensure that the proposed uniform increase in initial base deposit insurance assessment rates of 2 basis points is properly incorporated into the assessment regulation provisions governing the calculation of an IDI's quarterly deposit insurance assessment. The FDIC is proposing revisions to § 327.10 to reflect the assessment rate schedules that would be applicable before and after the effective date of this proposal (*i.e.,* January 1, 2023). The FDIC also is proposing to revise the uniform amounts for small banks and insured branches in §§ 327.16(a) and (d), respectively, to reflect the 2 basis point increase. Aside from the proposed revisions to reflect the assessment rate schedules, no additional revisions are required for the regulatory text applicable to large or highly complex banks because the formula in § 327.16(b) used to calculate their assessment rates incorporates the minimum and maximum initial base assessment rates then in effect.

Technical Amendments

As a technical change, the FDIC is rescinding certain rate schedules in § 327.10 that are no longer in effect. FDIC regulations provided for changes to deposit insurance assessment rates the quarter after the reserve ratio first reached or surpassed 1.15 percent, which occurred in the third quarter of 2016.[42] The FDIC is rescinding the outdated and obsolete provisions of, and revising references to, the superseded assessment rate schedules in its regulations. These changes impose no new requirements on FDIC-supervised institutions.

The FDIC also is rescinding in its entirety § 327.9—Assessment Pricing Methods, as such section is no longer applicable. The relevant section that includes the method for calculating risk-based assessments for all IDIs, particularly established small banks, is now in § 327.16, which was adopted by the Board in a final rule on April 26, 2016. That final rule became applicable the calendar quarter in which the reserve ratio of the DIF reached 1.15 percent, *i.e.,* the third quarter of 2016.[43] The FDIC also will make technical amendments to remove all references to § 327.9.

Other Amendments

The FDIC is proposing additional amendments to update and conform Appendix A to subpart A of part 327—Method to Derive Pricing Multipliers and Uniform Amount in accordance with the current assessment regulations. Specifically, the FDIC is proposing to remove sections I through V, which were superseded by the 2016 final rule revising the method to calculate risk-based assessment rates for established small IDIs.[44] The FDIC is proposing to replace the current language of sections I through V of Appendix A to subpart A of part 327 with the content of a previously proposed, but inadvertently not adopted, Appendix E—Method to Derive Pricing Multipliers and Uniform Amount. Appendix E was published in the 2016 revised notice of proposed rulemaking refining the deposit insurance assessment system for established small IDIs.[45] Appendix E was inadvertently not included in the final rule.

Under the 2016 final rule, initial base assessment rates for established small banks are calculated by applying statistically derived pricing multipliers to weighted CAMELS components and financial ratios; then adding the products to a uniform amount.[46] The content of Appendix E describes the statistical model on which the revised and current pricing method is based and, accordingly, revises the method to derive the pricing multipliers and uniform amount used to determine the assessment rate schedules currently in effect.[47]

[42] *See* 76 FR 10672 (Feb. 25, 2011) and 81 FR 32180 (May 20, 2016). In 2016, the FDIC amended its rules to refine the deposit insurance assessment system for established small IDIs (*i.e.,* those small IDIs that have been federally insured for at least five years). The final rule preserved the lower overall range of initial base assessment rates adopted in 2011 pursuant to the long-term fund management plan.

[43] *See* 81 FR 32180 (May 20, 2016).

[44] *See* 81 FR 32180 (May 20, 2016).

[45] *See* 81 FR 6153–6155 (Feb. 4, 2016).

[46] *See* 81 FR 32181.

[47] *See* 81 FR 32191; *see also* 81 FR 6116–17. Note, subsequent to the adoption of the 2016 final rule, the FDIC made other conforming and technical amendments to the assessment regulations at 12 CFR part 327 resulting from other rulemakings. The content of Appendix E does not need to be updated to reflect such conforming and other technical amendments and will be incorporated into the current Appendix A without change. *See* 83 FR 14565 (Apr. 5, 2018), 84 FR 1346 (Feb. 4, 2019), and 85 FR 71227 (Nov. 9, 2020).

The proposed revisions to Appendix A to subpart A of part 327 will result in: the removal of the superseded language currently in sections I through V; the addition of the language of Appendix E from the 2016 revised notice of proposed rulemaking reflecting the revised and current pricing method; and the retention of the current language (without change) of section VI (Description of Scorecard Measures) that applies to large and highly complex institutions.

D. Analysis

In setting assessment rates, the Board is authorized to set assessments for IDIs in such amounts as the Board may determine to be necessary or appropriate.[48] In setting assessment rates, the Board is required by statute to consider the following factors:

(i) The estimated operating expenses of the DIF.

(ii) The estimated case resolution expenses and income of the DIF.

(iii) The projected effects of the payment of assessments on the capital and earnings of IDIs.

(iv) The risk factors and other factors taken into account pursuant to section 7(b)(1) of the FDI Act (12 U.S.C. 1817(b)(1)) under the risk-based assessment system, including the requirement under such section to maintain a risk-based system.[49]

(v) Other factors the Board has determined to be appropriate.[50]

The following summarizes the factors considered in proposing a uniform increase in initial base assessment rates of 2 basis points.

Assessment Revenue Needs

Under the Restoration Plan, the FDIC is monitoring deposit balance trends, potential losses, and other factors that affect the reserve ratio. Table 11 shows the components of the reserve ratio for the third quarter of 2021 through the first quarter of 2022. Growth in insured deposits outpaced growth in the DIF, resulting in a decline in the reserve ratio of 4 basis points to 1.23 percent as of March 31, 2022.

While assessment revenue was the primary contributor to growth in the DIF, the weighted average assessment rate for all IDIs was approximately 3.7 basis points for the assessment period ending March 31, 2022, compared to approximately 4.0 basis points when the Restoration Plan was established. In the first quarter of 2022, unrealized losses on available-for-sale securities in the DIF portfolio contributed to a relatively flat DIF balance, driven by rising yields as market participants reacted to expectations of increased inflation and tighter monetary policy. The DIF has experienced low losses from bank failures, with no banks failing in 2021 and thus far in 2022. As of March 31, 2022, the DIF balance totaled $123.0 billion, up $3.7 billion from one year earlier.

TABLE 11—FUND BALANCE, ESTIMATED INSURED DEPOSITS, AND RESERVE RATIO

[Dollar amounts in billions]

	3Q 2021	4Q 2021	1Q 2022
Beginning Fund Balance	$120.5	$121.9	$123.1
Plus: Net Assessment Revenue	$1.7	$2.0	$1.9
Plus: Investment Income[a]	$0.1	($0.3)	($1.5)
Less: Loss Provisions	($0.1)	(*)	$0.1
Less: Operating Expenses	$0.5	$0.5	$0.4
Ending Fund Balance[b]	$121.9	$123.1	$123.0
Estimated Insured Deposits	$9,580.7	$9,733.5	$9,974.9
Q–O–Q Growth in Est. Insured Deposits	0.97%	1.59%	2.48%
Ending Reserve Ratio	1.27%	1.27%	1.23%

* Absolute value less than $50 million.
[a] Includes unrealized gains/losses on available-for-sale securities.
[b] Components of fund balance changes may not sum to totals due to rounding.

In recognition that sustained elevated insured deposit balance trends, lower than anticipated weighted average assessment rates, and other factors have affected the ability of the reserve ratio to return to 1.35 percent before September 30, 2028, the FDIC is proposing to increase initial base deposit insurance assessment rates uniformly by 2 basis points. While subject to uncertainty, based on updated analysis of deposit balance trends, potential losses, and other factors that affect the reserve ratio, the FDIC projects that the increase in assessment rates would increase the likelihood that the reserve ratio returns to 1.35 percent before September 30, 2028.

The proposed assessment rate schedules would remain in effect unless and until the reserve ratio meets or exceeds 2 percent. The proposed increase is further intended to support growth in the DIF in progressing toward the 2 percent DRR and would bring the average assessment rate close to the moderate steady assessment rate of 5.29 basis points that would have been required to maintain a positive DIF balance from 1950 to 2010, identified as part of the long-term, comprehensive fund management plan in 2011.[51] The assessment rate schedules adopted as part of the long-term, comprehensive plan came into effect once the reserve ratio reached 1.15 percent in 2016. Since then, the industry weighted average assessment rate has been consistently and significantly below the moderate, steady assessment rate, averaging 3.8 basis points and ranging between 3.5 and 4.1 basis points through 2019.[52] Over the four most recent quarters, the weighted average assessment rate ranged between 3.6 and 3.7 basis points.

The proposed increase in assessment rates would bring the average assessment rate of 3.7 basis points as of March 31, 2022, close to the moderate, steady assessment rate that would have been required to maintain a positive DIF balance from 1950 to 2010. Sustaining this additional assessment revenue

[48] 12 U.S.C. 1817(b)(2)(A).

[49] The risk factors referred to in factor (iv) include the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, the likely amount of any such loss, and the revenue needs of the Deposit Insurance Fund. *See* Section 7(b)(1)(C) of the FDI Act, 12 U.S.C. 1817(b)(1)(C).

[50] *See* Section 7(b)(2)(B) of the FDI Act, 12 U.S.C. 1817(b)(2)(B).

[51] *See* 75 FR 66273 and 76 FR 10675.

[52] Weighted average assessment rates do not reflect large bank surcharges, which were collected beginning December 30, 2016, and ending December 30, 2018, or small bank credits, which were applied beginning June 30, 2019, and ending June 30, 2020.

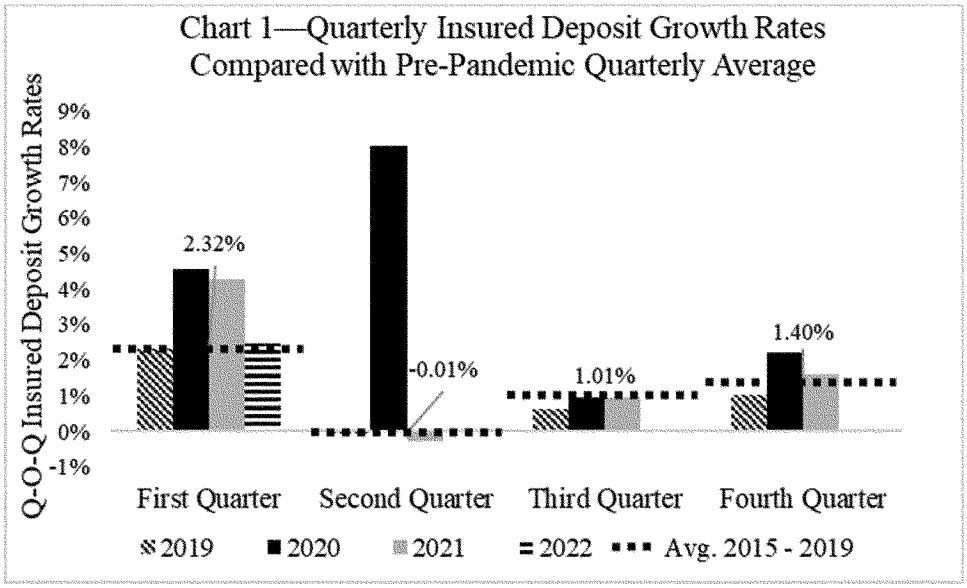
would support continued growth in the DIF, thereby reducing the likelihood that the FDIC would need to consider a potentially pro-cyclical assessment rate increase and increasing the likelihood of the DIF remaining positive through potential future periods of significant losses due to bank failures. In lieu of dividends, progressively lower assessment rate schedules will come into effect without further action by the Board when the reserve ratio at the end of the prior assessment period reaches 2 percent and 2.5 percent, respectively.[53]

The proposed 2 basis point increase in assessment rates would increase the likelihood of reaching the statutory minimum reserve ratio by September 30, 2028, and accelerate the timeline for achieving the long-term goal of a 2 percent DRR without imposing excessive burden on the industry. The proposal would have a modest effect on banking industry income, resulting in an estimated annual reduction averaging less than 2 percent. The banking industry remained resilient moving into the second half of 2022 despite the extraordinary challenges of the pandemic, and is well-positioned to absorb such a rate increase.

Overall, it is the FDIC's view that the recommended assessment rate increase appropriately balances several considerations, including the goal of reaching the statutory minimum reserve ratio reasonably promptly, the goal of strengthening the fund to reduce the risk of pro-cyclical assessments in the event of a future downturn or industry stress, and the projected effects on bank earnings at a time when the banking industry is better positioned to absorb an assessment rate increase.

Deposit Balance Trends

Over the past four quarters, insured deposits exhibited annual growth that was slightly above historical averages. As shown in Chart 1, fourth and first quarters have historically exhibited the highest insured deposit growth rates throughout the year. Insured deposits grew by 1.59 percent in the fourth quarter of 2021, slightly above the pre-pandemic quarterly average of 1.40 percent. In the first quarter of 2022, insured deposits grew by 2.48 percent, slightly above the quarterly average of 2.32 percent. This moderation in insured deposit growth, relative to the first half of 2020 and the first quarter of 2021, was attributable in part to a decline in support from fiscal stimulus programs and increases in consumer spending. Over the last year, insured deposits have grown by 4.9 percent, which is slightly elevated compared to the pre-pandemic average of 4.5 percent.



While insured deposit growth has largely normalized, aggregate balances remain significantly elevated. In its previous semiannual update, the FDIC estimated that excess insured deposits that flowed into banks as the result of actions taken by monetary and fiscal authorities, and by individuals, businesses, and financial market participants in response to the Coronavirus Disease (COVID–19) pandemic totaled approximately $1.13 trillion. This estimate reflects the amount of insured deposits as of September 30, 2021, in excess of the amount that would have resulted if insured deposits had grown at the pre-pandemic average rate of 4.5 percent since December 31, 2019.[54] Rather than receding, as previously expected, these excess insured deposits have grown by about $200 billion through March 31, 2022.

The outlook for insured deposits remains uncertain and depends on several factors, including the outlook for consumer spending and incomes. Any unexpected economic weakness or concerns about slower than expected economic growth may cause businesses and consumers to maintain caution in spending and keep deposit levels elevated. Continued supply chain pressures and prolonged higher inflation may cause consumer spending to rise further as consumers pay more for a similar amount of goods, or may cause consumers to delay or forgo some purchases. Similarly, unexpected financial market stress could prompt another round of investor risk aversion that could lead to an increase in insured deposits.

In contrast, tighter monetary policy and reduction of the Federal Reserve's

[53] *See* 12 CFR 327.10(c) and (d).

[54] By September 30, 2021, deposit balances would have fully reflected the more significant actions taken by monetary and fiscal authorities in response to the COVID–19 pandemic. September 2021 was also the first month that the personal savings rate declined to a level within the range reported during the year prior to the pandemic.

balance sheet may inhibit growth of insured deposits in the banking system. Despite the recent increases in the short-term benchmark rate set by the Federal Reserve, most IDIs have little incentive to raise interest rates on deposit accounts and spur deposit growth in the near-term, given excess liquidity. If competition for deposits remains subdued and rates paid on deposit accounts remain low, depositors may shift balances away from deposit accounts and into higher-yielding alternatives, including money-market funds.

A year has passed since the latest quarter of extraordinary growth in insured deposits prompted by the last round of fiscal stimulus, but those deposits have yet to exhibit any indication of receding. The FDIC will continue to closely monitor depositor behavior and the effects on insured deposits.

Case Resolution Expenses (Insurance Fund Losses)

Losses from past and future bank failures affect the reserve ratio by lowering the fund balance. In recent years, the DIF has experienced low losses from IDI failures. On average, four IDIs per year failed between 2016 and 2021, at an average annual cost to the fund of about $208 million.[55] No banks have failed thus far in 2022, marking 19 consecutive months without a bank failure and the seventh year in a row with few or no failures. Based on currently available information about banks expected to fail in the near term; analyses of longer-term prospects for troubled banks; and trends in CAMELS ratings, failure rates, and loss rates; the FDIC projects that failures for the five-year period from 2022 to 2026 would cost the fund approximately $1.8 billion.

The total number of institutions on the FDIC's Problem Bank List was 40 at the end of the first quarter of 2022, the lowest level since publication of the FDIC's Quarterly Banking Profile began in 1984.[56] The number of troubled banks is currently expected to remain at low levels.

Future losses to the DIF remain uncertain, although some sources of uncertainty have changed since the Restoration Plan was adopted in September of 2020. The uncertainties include, among others, the variable trends in COVID–19 infections, rising inflation and interest rates, the possibility of recession, supply chain pressures, geopolitical tensions, and evolving consumer and depositor behavior, any of which could have longer-term effects on the condition and performance of the banking industry. However, the banking industry has remained a source of strength for the economy, in part, because its stronger capital position has better positioned banks to withstand losses compared to 2008.

Operating Expenses and Investment Income

Operating expenses remain steady, while low investment returns coupled with elevated unrealized losses on securities held by the DIF have limited growth in the fund balance, particularly in the first quarter of 2022.

Operating expenses partially offset increases in the DIF balance. Operating expenses have remained steady, ranging between $450 and $475 million per quarter since the Restoration Plan was first adopted in September 2020, totaling $453 million as of March 31, 2022.

Growth in the fund balance has been limited by a prolonged period of low investment returns on securities held by the DIF. Recently, as a result of the rising interest rate environment and market expectations leading up to such rate increases, the DIF has also experienced elevated unrealized losses on securities. Unrealized losses on available-for-sale securities in the DIF portfolio contributed to a relatively flat DIF balance in the first quarter of 2022. Unrealized losses were primarily due to rising yields as market participants reacted to expectations of increased inflation and tighter monetary policy. Future market movements may temporarily increase unrealized losses in the near term, to the extent that market participants have not already priced in these actions. However, the FDIC expects that these unrealized losses will be outpaced by higher investment returns over the longer-term as future cash proceeds are reinvested at higher rates.

Projections for Fund Balance and Reserve Ratio

In its consideration of proposed rates, the FDIC sought to increase the likelihood that the reserve ratio would reach the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028, and to support growth in the DIF in progressing toward the long-term goal of a 2 percent DRR. With these objectives in mind, the FDIC updated its analysis and projections for the fund balance and reserve ratio to estimate how changes in insured deposit growth and assessment rates affect when the reserve ratio would reach the statutory minimum of 1.35 percent and the DRR of 2 percent.

Based on this analysis, the FDIC projects that, absent an increase in assessment rates, the reserve ratio is at risk of not reaching the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028. In estimating how soon the reserve ratio would reach 1.35 percent, the FDIC developed two scenarios that assume different levels of insured deposit growth and average assessment rates, both of which the FDIC views as reasonable based on current and historical data. For insured deposit growth, the FDIC assumed annual growth rates of 4.0 percent and 3.5 percent, respectively. These insured deposit growth rates represent a range of excess insured deposits resulting from the pandemic being retained. The assumption of a 4.0 percent annual growth rate reflects retention of all of the estimated $1.13 trillion of excess deposits in insured accounts, with this amount not contributing to further growth, while the remaining balance of insured deposits continues to grow at the pre-pandemic average annual rate of 4.5 percent.

Alternatively, a 3.5 percent annual growth rate assumption reflects banks retaining about 60 percent of the estimated excess insured deposits resulting from the pandemic, with this amount not contributing to further growth, while the remaining balance of insured deposits grows at the pre-pandemic average annual rate of 4.5 percent.

The two scenarios also apply different assumptions for average annual assessment rates. The weighted average assessment rate for all banks during 2019, prior to the pandemic, was about 3.5 basis points and rose to 4.0 basis points, on average, during 2020. The weighted average assessment rate for all IDIs was approximately 3.7 basis points for the assessment period ending March 31, 2022. For the scenario in which all excess insured deposits are retained, the FDIC assumed a lower assessment rate of 3.5 basis points, and for the scenario in which some excess insured deposits recede, the FDIC assumed an assessment rate of 4.0 basis points.

In developing the proposal, the FDIC projected the date that the reserve ratio would likely reach the statutory minimum of 1.35 percent in each

[55] FDIC, Annual Report 2021, Assets and Deposits of Failed or Assisted Insured Institutions and Losses to the Deposit Insurance Fund, 1934–2021, page 190, available at *https://www.fdic.gov/about/financial-reports/reports/2021annualreport/2021-arfinal.pdf.*

[56] ''Problem'' institutions are institutions with a CAMELS composite rating of ''4'' or ''5'' due to financial, operational, or managerial weaknesses that threaten their continued financial viability.

scenario, shown in Table 12 below.[57] Under Scenario A, which assumes annual insured deposit growth of 4.0 percent and an average annual assessment rate of 3.5 basis points, the FDIC projects that the reserve ratio would reach 1.35 percent in the third quarter of 2034, after the statutory deadline of September 30, 2028.

TABLE 12—SCENARIO ANALYSIS: EXPECTED TIME TO REACH A 1.35 PERCENT RESERVE RATIO

	Annual insured deposit growth rate [percent]	Average annual assessment rate [basis points]	Date the reserve ratio reaches 1.35 percent	As of 1Q 2023, average annual assessment rate increases by . . .	
				1 BPS	2 BPS
Scenario A	4.0	3.5	3Q 2034	3Q 2026	4Q 2024
Scenario B	3.5	4.0	2Q 2027	2Q 2025	2Q 2024

In Scenario B, which assumed annual insured deposit growth of 3.5 percent and an average annual assessment rate of 4.0 basis points, the FDIC projects that the reserve ratio would reach 1.35 percent in the second quarter of 2027, five years from the second quarter of 2022 and only five quarters before the statutory deadline. Even under these relatively favorable conditions, which assume lower insured deposit growth and a higher average assessment rate than experienced over the last year, the reserve ratio reaches the statutory minimum of 1.35 percent close to the statutory deadline. While the FDIC projects that the reserve ratio would reach the statutory minimum before the deadline in this Scenario, any number of uncertain factors—including unexpected losses, accelerated insured deposit growth, or lower weighted average assessment rates due to improving risk profiles of institutions—could materialize between now and the second quarter of 2027, and easily prevent the reserve ratio from reaching the minimum by the statutory deadline.

Both Scenarios apply assumptions for insured deposit growth and average assessment rates that the FDIC views as reasonable based on current and historical data, and that do not widely differ from each other in magnitude. These relatively minor changes in the underlying assumptions result in considerably different outcomes, as the reserve ratio is projected to reach the statutory minimum of 1.35 percent in 2034 in Scenario A, compared to 7 years earlier in Scenario B. The disparity between outcomes under these Scenarios demonstrates the sensitivity of the projections to slight variations in any key variable.

Given these uncertainties, the FDIC projected the DIF balance and associated reserve ratio under each Scenario, applying an increase in average assessment rates beginning in the first assessment period of 2023. Under Scenario A, a 1 basis point increase in the average assessment rate is projected to result in the reserve ratio reaching the minimum in the third quarter of 2026, and a 2 basis point increase is projected to result in the reserve ratio reaching the minimum in the fourth quarter of 2024. Under Scenario B, a 1 basis point increase in the average assessment rate is projected to result in the reserve ratio reaching the minimum in the second quarter of 2025, and a 2 basis point increase is projected to result in the reserve ratio reaching the minimum in the second quarter of 2024.

While the FDIC projects that the reserve ratio would reach the minimum before the statutory deadline under Scenario B with no increase in assessment rates, or under Scenario A with a 1 basis point increase in the average assessment rate, these outcomes are still over 4 years away and carry higher risk that the FDIC would have to increase assessment rates in the face of a future downturn or industry stress.

In contrast, the proposed increase of 2 basis points would improve the likelihood that the reserve ratio will reach the minimum ahead of the statutory deadline, building in a buffer in the event of uncertainties as described above that could stall or counter growth in the reserve ratio. Under both scenarios described above, an increase in assessment rates of 2 basis points is projected to result in the reserve ratio reaching the statutory minimum reserve ratio of 1.35 percent approximately two years from now.

Reaching the minimum reserve ratio of 1.35 percent ahead of the statutory deadline would mean that the FDIC would exit its Restoration Plan. If the reserve ratio subsequently declined below the statutory minimum, the FDIC would establish a new restoration plan and would have an additional eight years to restore the reserve ratio.

The FDIC also analyzed the effects of an increase in assessment rates in supporting growth in the DIF in progressing toward the 2 percent DRR. For this analysis, the FDIC assumed a near-term annual insured deposit growth rate of 3.5 percent and a weighted average assessment rate of 4.0 basis points.[58] These assumptions reflect the ranges of insured deposit growth and assessment rates used in Scenario B, described above, and result in the shortest projected timeline to reach a 2 percent reserve ratio. As illustrated in Chart 2, even under these relatively favorable conditions, absent an increase in assessment rates, the projected reserve ratio would not reach 2 percent until 2045, over twenty years from now.[59] When the FDIC proposed the long-term, comprehensive fund management plan in 2010, it estimated that the reserve ratio would reach 2 percent in 2027.[60]

Using the same assumptions, an increase in assessment rates would significantly accelerate the timeline for achieving a 2 percent DRR. An increase in assessment rates of 1 basis point resulted in the projected reserve ratio reaching 2 percent in 2036, nine years faster. Applying a 2 basis point increase in assessment rates would accelerate the timeline by an additional four years, to 2032.

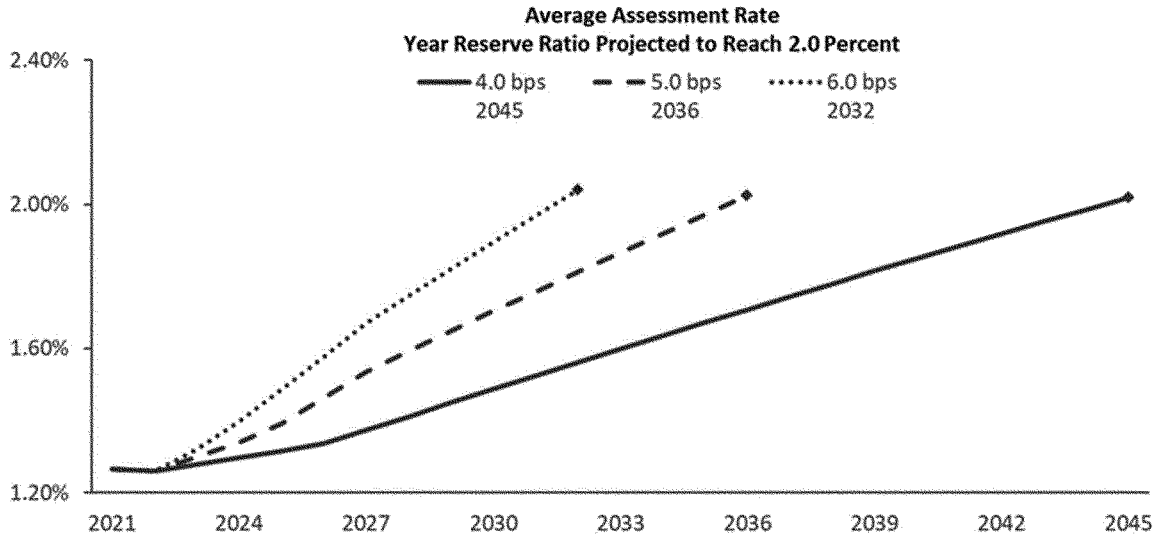
[57] For simplicity, the analysis shown in Table 12 assumes that: (1) the assessment base grows 4.5 percent, annually; (2) interest income on the deposit insurance fund balance is zero; (3) operating expenses grow at 1 percent per year; and (4) failures for the five-year period from 2022 to 2026 would cost approximately $1.8 billion.

[58] After September 30, 2028, the deadline to restore the reserve ratio to the 1.35 percent minimum, insured deposits are assumed to grow at the pre-pandemic annual average of 4.5 percent.

[59] The analysis shown in Chart 2 is based on the assumptions used in Scenario B through the projected quarter that the reserve ratio meets or exceeds 1.35 percent. Afterward, the analysis assumes: (1) net income on investments by the fund based on market-implied forward rates; (2) the assessment base grows 4.5 percent, annually; (3) operating expenses grow at 1 percent per year; and (4) failures for the five-year period from 2022 to 2026 cost approximately $1.8 billion, with a low level of losses each year thereafter. The uniform increase in assessment rates of 1 or 2 basis points from the current rate schedule is assumed to take effect on January 1, 2023.

[60] *See* 75 FR 66281.

Chart 2 – Expected Time to Reach a 2 Percent Reserve Ratio



The proposed 2 basis point increase in assessment rates would bring the average assessment rate of 3.7 basis points, as of March 31, 2022, close to the moderate steady assessment rate that would have been required to maintain a positive DIF balance from 1950 to 2010, and identified as part of the long-term, comprehensive fund management plan in 2011.[61] Upon achieving the 2 percent DRR, progressively lower assessment rate schedules would take effect. The proposed 2 basis point increase would accelerate the timeline for achieving the 2 percent DRR significantly, would reduce the likelihood that the FDIC would need to consider a potentially pro-cyclical assessment rate increase, and would increase the likelihood of the DIF remaining positive through potential future periods of significant losses due to bank failures, consistent with the FDIC's long-term fund management plan.

Capital and Earnings Analysis and Expected Effects

This analysis estimates the effect of the changes in deposit insurance assessments resulting from the proposed uniform increase in initial base assessment rates of 2 basis points. For this analysis, data as of March 31, 2022, are used to calculate each bank's assessment base and risk-based assessment rate, absent the proposed increase. The base and rate are assumed to remain constant throughout the one-year projection period.[62]

The analysis assumes that pre-tax income for the four quarters beginning on the proposed effective date of the rate increase, January 1, 2023, is equal to income reported from April 1, 2021, through March 31, 2022, adjusted for mergers. The analysis also assumes that the effects of changes in assessments are not transferred to customers in the form of changes in borrowing rates, deposit rates, or service fees. Since deposit insurance assessments are a tax-deductible operating expense, increases in the assessment expense can lower taxable income. Therefore, the analysis considers the effective after-tax cost of assessments in calculating the effect on capital.[63]

The effect of the change in assessments on an institution's income is measured by the change in deposit insurance assessments as a percent of income before assessments and taxes (hereafter referred to as ''income''). This income measure is used in order to eliminate the potentially transitory effects of taxes on profitability. The FDIC analyzed the impact of assessment changes on institutions that were profitable in the period covering the 12 months before March 31, 2022.

An institution's earnings retention and dividend policies also influence the extent to which assessments affect equity levels. If an institution maintains the same dollar amount of dividends when it pays a higher deposit insurance assessment under the final rule, equity (retained earnings) will be less by the full amount of the after-tax cost of the increase in the assessment. This analysis instead assumes that an institution will maintain its dividend rate (that is, dividends as a fraction of net income) unchanged from the weighted average rate reported over the four quarters ending March 31, 2022. In the event that the ratio of equity to assets falls below 4 percent, however, this assumption is modified such that an institution retains the amount necessary to reach a 4 percent minimum and distributes any remaining funds according to the dividend payout rate.[64]

The FDIC estimates that a uniform increase in initial base assessment rates of 2 basis points would contribute approximately $4.5 billion in assessment revenue in 2023.[65] Given the assumptions in the analysis, for the industry as a whole, the FDIC estimates

[61] *See* 75 FR 66273 and 76 FR 10675.

[62] All income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of non-zero earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[63] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

[64] The analysis uses 4 percent as the threshold because IDIs generally need to maintain a leverage ratio of 4.0 percent or greater to be considered ''adequately capitalized'' under Prompt Corrective Action Standards, in addition to the following requirements: (i) total risk-based capital ratio of 8.0 percent or greater; and (ii) Tier 1 risk-based capital ratio of 6.0 percent or greater; and (iii) common equity tier 1 capital ratio of 4.5 percent or greater; and (iv) does not meet the definition of ''well capitalized.'' (iv) Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be ''adequately capitalized'' if it satisfies the above criteria and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.10. *See* 12 CFR 324.403. For purposes of this analysis, equity to assets is used as the measure of capital adequacy.

[65] Estimates and projections are based on the assumptions used in Scenario B.

that, on average, a uniform increase in assessment rates of 2 basis points would decrease Tier 1 capital by an estimated 0.1 percent. The proposed increase is estimated to cause no banks whose ratio of equity to assets would have equaled or exceeded 4 percent under the current assessment rate schedule to fall below that percentage (becoming undercapitalized), and no banks whose ratio of equity to assets would have exceeded 2 percent under the current rate schedule to fall below that percentage, becoming critically undercapitalized.

The banking industry reported an increase in full year 2021 income primarily due to negative provision expense in all four quarters of the year. Fourth quarter net income improved from a year ago due to higher net interest income and negative provisions while first quarter 2022 net income declined due to higher and positive provisions. While provisions are positive and caused the decline in quarterly net income, the current level remains low compared to pre-pandemic levels. The net interest margin for the industry remained stable from the prior quarter and from the year-ago quarter, as growth in earning assets has been equal to the growth in net interest income. The average return-on-assets (ROA) decreased from a decade-high of 1.38 percent in first quarter 2021 to 1.00 percent in first quarter 2022. The banking industry remained resilient moving into the second half of 2022 despite the extraordinary challenges of the pandemic, and is well-positioned to absorb the proposed rate increase.

Given the assumptions in the analysis, for the industry as a whole, the FDIC estimates that the annual increase in assessments would average 1.0 percent of income, which includes an average of 0.9 percent for small banks and an average of 1.0 percent for large and highly complex institutions.[66]

Table 13 shows that approximately 95 percent of profitable institutions are projected to have an increase in assessments of less than 5 percent of income. Another 5 percent of profitable institutions are projected to have an increase in assessments equal to or exceeding 5 percent of income.

TABLE 13—ESTIMATED ANNUAL EFFECT OF THE PROPOSED RULE ON INCOME FOR ALL PROFITABLE INSTITUTIONS [1]

Change in assessments as percent of income	Number of institutions	Percent of institutions	Assets of institutions ($ billions)	Percent of assets
Over 30%	8	0	1	<1
20% to 30%	11	<1	1	<1
10% to 20%	48	1	7	<1
5% to 10%	145	3	28	<1
Less than 5%	4,400	95	23,724	100
No Change	3	<1	<1	<1
Total	4,615	100	23,762	100

[1] Income is defined as annual income before assessments and taxes. Annual income is assumed to equal income from April 1, 2021, through March 31, 2022, adjusted for mergers. Profitable institutions are defined as those having positive merger-adjusted income for the 12 months ending March 31, 2022. Excludes 9 insured branches of foreign banks and 7 institutions reporting fewer than 4 quarters of reported earnings. Some columns do not add to total due to rounding.

Among profitable small institutions, 95 percent are projected to have an increase in assessments of less than 5 percent of income, as shown in Table 14. The remaining 5 percent of profitable small institutions are projected to have an increase in assessments equal to or exceeding 5 percent of income. As shown in Table 15, 100 percent of profitable large and highly complex institutions are projected to have an increase in assessments below 5 percent of income.

TABLE 14—ESTIMATED ANNUAL EFFECT OF THE PROPOSED RULE ON INCOME FOR PROFITABLE SMALL INSTITUTIONS [1]

Change in assessments as percent of income	Number of institutions	Percent of institutions	Assets of institutions ($ billions)	Percent of assets
Over 30%	8	<1	1	<1
20% to 30%	11	<1	1	<1
10% to 20%	48	1	7	<1
5% to 10%	145	3	28	1
Less than 5%	4,258	95	3,466	99
No Change	3	<1	<1	<1
Total	4,473	100	3,503	100

[1] Income is defined as annual income before assessments and taxes. Annual income is assumed to equal income from April 1, 2021, through March 31, 2022, adjusted for mergers. Profitable institutions are defined as those having positive merger-adjusted income for the 12 months ending March 31, 2022. Some columns do not add to total due to rounding.

[66] Earnings or income are annual income before assessments and taxes. Annual income is assumed to equal income from April 1, 2021, through March 31, 2022.

TABLE 15—ESTIMATED ANNUAL EFFECT OF THE PROPOSED RULE ON INCOME FOR PROFITABLE LARGE AND HIGHLY COMPLEX INSTITUTIONS [1]

Change in assessments as percent of income	Number of institutions	Percent of institutions	Assets of institutions ($ billions)	Percent of assets
Over 30%	0	0	0	0
20% to 30%	0	0	0	0
10% to 20%	0	0	0	0
5% to 10%	0	0	0	0
Less than 5%	142	100	20,258	100
No Change	0	0	0	0
Total	142	100	20,258	100

[1] Income is defined as annual income before assessments and taxes. Annual income is assumed to equal income from April 1, 2021, through March 31, 2022, adjusted for mergers. Profitable institutions are defined as those having positive merger-adjusted income for the 12 months ending March 31, 2022. Some columns do not add to total due to rounding.

Strengthening the DIF

As discussed above, the proposed rule is unlikely to have large material effects on any individual institution. However, the resulting increase in assessment revenue, combined across all institutions, would grow the DIF by over $4 billion a year. This growth would strengthen the DIF's ability to withstand potential future periods of significant losses due to bank failures and reduce the likelihood that the FDIC would need to increase assessment rates during a future banking crisis. Accelerating the time in which the reserve ratio would reach the statutory minimum of 1.35 percent and the DRR of 2 percent would allow the banking industry to remain a source of strength for the economy during a potential future downturn and would continue to ensure public confidence in federal deposit insurance.

E. Alternatives Considered

The FDIC considered the reasonable and possible alternatives described below. On balance, the FDIC views the current proposal as the most appropriate and most straightforward manner in which to achieve the objectives of the Amended Restoration Plan and the long-term fund management plan.

Alternative 1: Maintain Current Assessment Rate Schedule

The first alternative would be to maintain the current schedule of assessment rates. As described above, the FDIC projected that the reserve ratio would reach the statutory minimum of 1.35 percent in the third quarter of 2034, after the statutory deadline under Scenario A, which assumes annual insured deposit growth of 4.0 percent and an average annual assessment rate of 3.5 basis points. Under Scenario B, which assumes insured deposit growth of 3.5 percent and an average assessment rate of 4.0 basis points, the FDIC projected that the reserve ratio would reach the statutory minimum of 1.35 percent in the second quarter of 2027, only five quarters before the statutory deadline of September 30, 2028.

As described above, the FDIC rejected maintaining the current schedule of assessment rates. Absent an increase in assessment rates, under Scenario A growth in the DIF would not be sufficient for the reserve ratio to reach the statutory minimum of 1.35 percent ahead of the required deadline. While the reserve ratio would reach the statutory minimum ahead of the required deadline under Scenario B, growth in the fund resulting from current assessment rates could be offset if unexpected losses materialize, insured deposit growth accelerates, or risk profiles of institutions continue to improve resulting in lower assessment rates.

Additionally, relative to the other alternatives and the current proposal, maintaining the current schedule of assessment rates would not result in any acceleration of growth in the DIF in progressing toward the FDIC's long-term goal of a 2 percent DRR. Absent an increase in assessment rates and assuming annual insured deposit growth of 3.5 percent and a weighted average assessment rate of 4.0 basis points, the FDIC projected that the reserve ratio would achieve the 2 percent DRR in 2045, thirteen years later than if the FDIC were to apply an increase in assessment rates of 2 basis points beginning in 2023.

Alternative 2: Increase in Assessment Rates of 1 Basis Point

A second alternative would be to increase initial base assessment rates uniformly by 1 basis point. As described above, the FDIC projected that a 1 basis point increase in the average assessment rate would result in the reserve ratio reaching the minimum in the third quarter of 2026 under Scenario A and in the second quarter of 2025 under Scenario B.

However, also as described above, the FDIC rejected this alternative in favor of a 2 basis point increase. Reaching the minimum reserve ratio in 2026, as projected under Scenario A, would be very close to the statutory deadline and could result in the FDIC having to consider higher assessment rates in the face of a future downturn or industry stress. While a 1 basis point increase under Scenario B is projected to result in the reserve ratio reaching 1.35 percent in 2025, the increase in associated assessment revenue would generate a smaller buffer to absorb unexpected losses, accelerated insured deposit growth, or lower average assessment rates that could materialize over this period.

Additionally, the FDIC projected that a 1 basis point increase in assessment rates would result in the reserve ratio achieving the 2 percent DRR in approximately 2036, about 4 years later than if the FDIC were to apply an increase in assessment rates of 2 basis points beginning in 2023.

Alternative 3: One-Time Special Assessment of 4.5 Basis Points

A third alternative would be to impose a one-time special assessment of 4.5 basis points, applicable to the assessment base of all IDIs. Utilizing data as of March 31, 2022, and assuming an effective date of January 1, 2023, the FDIC estimated that a one-time special assessment of 4.5 basis points would contribute approximately $9.8 billion in assessment revenue and the reserve ratio would reach 1.35 percent the quarter following the effective date (*i.e.,* the second assessment period of 2023).[67] Accordingly, the FDIC

[67] Estimates and projections related to the one-time special assessment assume that: (1) insured

Continued

estimates that, on average, a one-time special assessment of 4.5 basis points would decrease Tier 1 capital by an estimated 0.4 percent and reduce the annual earnings of IDIs by approximately 2.3 percent, in aggregate.[68]

While a one-time special assessment of 4.5 basis points is projected to increase the DIF reserve ratio to 1.35 percent the most quickly and precisely, and would significantly mitigate the potential that the FDIC would need to consider a potentially pro-cyclical increase in assessment rates, it is estimated to result in a quarterly assessment expense that is more than 8 times greater than the proposal. Additionally, while the reserve ratio is projected to be restored to 1.35 percent immediately under this alternative, the risk would remain that it could fall back below the statutory minimum shortly thereafter if a sufficient cushion is not built in. This would result in the establishment of a new restoration plan. Further, a one-time special assessment would not meaningfully accelerate the timeline for achieving the 2 percent DRR.

The FDIC requests comments on the proposal and the alternative approaches considered. On balance, in the FDIC's view, the proposed increase in assessment rates appropriately balances several considerations, including the goal of reaching the statutory minimum reserve ratio reasonably promptly, accelerating the timeline for achieving a 2 percent DRR, strengthening the fund to reduce the risk that the FDIC would need to consider a potentially pro-cyclical assessment increase in the event of a future downturn or industry stress, and the projected effects on bank earnings at a time when the banking industry is better positioned to absorb an assessment rate increase.

F. Comment Period, Effective Date, and Application Date

The FDIC is issuing this proposal with an opportunity for public comment through August 20, 2022. Following the comment period, the FDIC expects to issue a final rule with an effective date of January 1, 2023, and applicable to the first quarterly assessment period of 2023 (*i.e.,* January 1–March 31, 2023).

IV. Request for Comment

The FDIC is requesting comment on all aspects of the notice of proposed rulemaking, in addition to the specific requests below.

Question 1: The FDIC invites comment on its proposal to increase deposit insurance assessment rates uniformly by 2 basis points, beginning with the first quarterly assessment period of 2023. How does the approach in the proposed rule support or not support the objectives of the Amended Restoration Plan and the FDIC's long-term fund management plan?

Question 2: The FDIC invites comment on the reasonable and possible alternatives described in this proposed rule. What are other reasonable and possible alternatives that the FDIC should consider?

V. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[69] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $750 million.[70] Certain types of rules, such as rules of particular applicability relating to rates, corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[71] Because the proposed rule relates directly to the rates imposed on IDIs for deposit insurance, the proposed rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

The proposed rule is expected to affect all FDIC-insured depository institutions. According to recent Call Report data, there are currently 4,848 IDIs holding approximately $24 trillion in assets.[72] Of these, approximately 3,478 IDIs would be considered small entities for the purposes of RFA.[73] These small entities hold approximately $905 billion in assets.

The proposed rule would increase initial base assessment rates for these small entities by 2 basis points. In aggregate, the total annual amount paid in assessments by small entities would increase by approximately $160 million, from $320 million to $480 million.[74]

At the individual bank level, few institutions would be significantly affected by the proposed rule. Fewer than 330 small entities would experience annual assessment increases greater than $100,000, and none would experience annual assessment increases greater than $150,000. When compared to the banks' expenses, the annual assessment increases are significant for only a handful of small entities: only five small entities would experience annual assessment increases greater than 2.5 percent of their noninterest expenses, and only three would experience annual assessment increases greater than 5 percent of what they paid in employee salaries and benefits.[75]

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.[76] The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The proposed rule does not revise any of these existing assessment information

deposit growth is 4 percent annually; (2) the average assessment rate before any rate increase is 3.5 basis points; (3) losses to the DIF from bank failures total $1.8 billion from 2022 to 2026; (4) the assessment base grows 4.5 percent, annually; (5) interest income on the deposit insurance fund balance is zero; and (6) operating expenses grow at 1 percent per year.

[68] Earnings or income are annual income before assessments, taxes, and extraordinary items. Annual income is assumed to equal income from April 1, 2021 through March 31, 2022.

[69] 5 U.S.C. 601 *et seq.*

[70] The SBA defines a small banking organization as having $750 million or less in assets, where an organization's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *See* 13 CFR 121.201 (as amended by 87 FR 18627, effective May 2, 2022). In its determination, the SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. *See* 13 CFR 121.103. Following these regulations, the FDIC uses a banking organization's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the banking organization is ''small'' for the purposes of RFA.

[71] 5 U.S.C. 601.

[72] Based on Call Report data as of December 31, 2021, the most recent period for which small entities can be identified.

[73] *Id.*

[74] *Id.*

[75] *Id.* For purposes of the RFA, the FDIC generally considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses.

[76] 4 U.S.C. 3501–3521.

collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review.

C. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[77] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[78]

The proposed rule would not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. Nevertheless, the requirements of RCDRIA have been considered in setting the proposed effective date. The FDIC invites comments that will further inform its consideration of RCDRIA.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[79] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

VI. Revisions to Code of Federal Regulations

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority for 12 CFR part 327 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821.

■ 2. Amend § 327.4 by revising paragraphs (a) and (c) to read as follows:

§ 327.4 Assessment rates.

(a) *Assessment risk assignment.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.16, each insured depository institution will be provided an assessment risk assignment. Notice of an institution's current assessment risk assignment will be provided to the institution with each quarterly certified statement invoice. Adjusted assessment risk assignments for prior periods may also be provided by the Corporation. Notice of the procedures applicable to reviews will be included with the notice of assessment risk assignment provided pursuant to this paragraph (a).

* * * * *

(c) *Requests for review.* An institution that believes any assessment risk assignment provided by the Corporation pursuant to paragraph (a) of this section is incorrect and seeks to change it must submit a written request for review of that risk assignment. An institution cannot request review through this process of the CAMELS ratings assigned by its primary federal regulator or challenge the appropriateness of any such rating; each federal regulator has established procedures for that purpose. An institution may also request review of a determination by the FDIC to assess the institution as a large, highly complex, or a small institution (§ 327.16(f)(3)) or a determination by the FDIC that the institution is a new institution (§ 327.16(g)(5)). Any request for review must be submitted within 90 days from the date the assessment risk assignment being challenged pursuant to paragraph (a) of this section appears on the institution's quarterly certified statement invoice. The request shall be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC, and shall include documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Supervision and Consumer Protection (or designee) or any successor divisions, as appropriate, shall promptly notify the institution in writing of his or her determination of whether a change is warranted. If the institution requesting review disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

* * * * *

■ 3. Amend § 327.8 by revising paragraphs (e)(2), (f), (k)(1), and (l) through (p) to read as follows:

§ 327.8 Definitions.

* * * * *

(e) * * *

(2) Except as provided in paragraph (e)(3) of this section and § 327.17(e), if, after December 31, 2006, an institution classified as large under paragraph (f) of this section (other than an institution classified as large for purposes of § 327.16(f)) reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as small beginning the following quarter.

* * * * *

(f) *Large institution.* An institution classified as large for purposes of § 327.16(f) or an insured depository institution with assets of $10 billion or more, excluding assets as described in § 327.17(e), as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) shall be classified as a large institution. If, after December 31, 2006,

[77] 12 U.S.C. 4802(a).

[78] 12 U.S.C. 4802(b).

[79] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

an institution classified as small under paragraph (e) of this section reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as large beginning the following quarter.

* * * * *

(k) * * *

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (k)(2) through (5) of this section and § 327.16(g)(3) and (4), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

* * * * *

(l) *Risk assignment.* Under § 327.16, for all new small institutions and insured branches of foreign banks, risk assignment includes assignment to Risk Category I, II, III, or IV, and for insured branches of foreign banks within Risk Category I, assignment to an assessment rate or rates. For all established small institutions, and all large institutions and all highly complex institutions, risk assignment includes assignment to an assessment rate.

(m) *Unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.16(e)(1) and the depository institution debt adjustment as set forth in § 327.16(e)(2), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(n) *Senior unsecured liability.* For purposes of the unsecured debt adjustment as set forth in § 327.16(e)(1) and the depository institution debt adjustment as set forth in § 327.16(e)(2), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b) of this section.

(o) *Subordinated debt.* For purposes of the unsecured debt adjustment as set forth in § 327.16(e)(1) and the depository institution debt adjustment as set forth in § 327.16(e)(2), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(p) *Long-term unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.16(e)(1) and the depository institution debt adjustment as set forth in § 327.16(e)(2), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity; however, any such debt where the holder of the debt has a redemption option that is exercisable within one year of the reporting date shall not be deemed long-term unsecured debt.

* * * * *

§ 327.9 [Removed and Reserved]

■ 4. Remove and reserve § 327.9.

■ 5. Amend § 327.10 as follows:

■ a. Remove paragraph (a);

■ b. Redesignate paragraph (b) as paragraph (a) and revise it;

■ c. Add new paragraph (b);

■ d. Remove paragraph (e)(1)(i);

■ e. Redesignate paragraph (e)(1)(ii) as paragraph (e)(1)(i) and revise it;

■ f. Add new paragraph (e)(1)(ii);

■ g. Revise paragraph (e)(1)(iii);

■ h. Add paragraph (e)(1)(iv);

■ i. Revise paragraph (e)(2)(i);

■ j. Redesignate paragraphs (e)(2)(ii) and (iii) as (e)(2)(iii) and (iv), respectively; and

■ k. Add new paragraph (e)(2)(ii).

The revisions and additions read as follows:

§ 327.10 Assessment rate schedules.

(a) Assessment rate schedules for established small institutions and large and highly complex institutions applicable in the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and in all subsequent assessment periods through the assessment period ending December 31, 2022, where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent.

(1) *Initial base assessment rate schedule for established small institutions and large and highly complex institutions.* In the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, where the reserve ratio as of the end of the prior assessment period is less than 2 percent, the initial base assessment rate for established small institutions and large and highly complex institutions, except as provided in paragraph (f) of this section, shall be the rate prescribed in the schedule in the following table:

TABLE 1 TO PARAGRAPH (a)(1) INTRODUCTORY TEXT—INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD AFTER JUNE 30, 2016, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD HAS REACHED 1.15 PERCENT, AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS THROUGH THE ASSESSMENT PERIOD ENDING DECEMBER 31 2022, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT [1]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	3 to 16	6 to 30	16 to 30	3 to 30

[1] All amounts are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *CAMELS composite 1- and 2-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 1 or 2 shall range from 3 to 16 basis points.

(ii) *CAMELS composite 3-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 3 shall range from 6 to 30 basis points.

(iii) *CAMELS composite 4- and 5-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 4 or 5 shall range from 16 to 30 basis points.

(iv) *Large and highly complex institutions initial base assessment rate schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 3 to 30 basis points.

(2) *Total base assessment rate schedule after adjustments.* In the first assessment period after June 30, 2016, that the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, where the reserve ratio for the prior assessment period is less than 2 percent, the total base assessment rates after adjustments for established small institutions and large and highly complex institutions, except as provided in paragraph (f) of this section, shall be as prescribed in the schedule in the following table:

TABLE 2 TO PARAGRAPH (a)(2) INTRODUCTORY TEXT—TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)[1] BEGINNING THE FIRST ASSESSMENT PERIOD, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD HAS REACHED 1.15 PERCENT, AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS THROUGH THE ASSESSMENT PERIOD ENDING DECEMBER 31, 2022, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT[2]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	3 to 16	6 to 30	16 to 30	3 to 30
Unsecured Debt Adjustment	−5 to 0	−5 to 0	−5 to 0	−5 to 0
Brokered Deposit Adjustment	N/A	N/A	N/A	0 to 10
Total Base Assessment Rate	1.5 to 16	3 to 30	11 to 30	1.5 to 40

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(i) *CAMELS composite 1- and 2-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 1 or 2 shall range from 1.5 to 16 basis points.

(ii) *CAMELS composite 3-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 3 shall range from 3 to 30 basis points.

(iii) *CAMELS composite 4- and 5-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 4 or 5 shall range from 11 to 30 basis points.

(iv) *Large and highly complex institutions total base assessment rate schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 1.5 to 40 basis points.

(b) Assessment rate schedules for established small institutions and large and highly complex institutions beginning the first assessment period of 2023, where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent

(1) *Initial base assessment rate schedule for established small institutions and large and highly complex institutions.* Beginning the first assessment period of 2023, where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent, the initial base assessment rate for established small institutions and large and highly complex institutions, except as provided in paragraph (f) of this section, shall be the rate prescribed in the schedule in the following table:

TABLE 3 TO PARAGRAPH (b)(1) INTRODUCTORY TEXT—INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT[1]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	5 to 18	8 to 32	18 to 32	5 to 32

[1] All amounts are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *CAMELS composite 1- and 2-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 1 or 2 shall range from 5 to 18 basis points.

(ii) *CAMELS composite 3-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 3 shall range from 8 to 32 basis points.

(iii) *CAMELS composite 4- and 5-rated established small institutions initial base assessment rate schedule.* The annual initial base assessment rates for all established small institutions with a CAMELS composite rating of 4 or 5 shall range from 18 to 32 basis points.

(iv) *Large and highly complex institutions initial base assessment rate schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 5 to 32 basis points.

(2) *Total base assessment rate schedule after adjustments.* Beginning the first assessment period of 2023,

where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent, the total base assessment rates after adjustments for established small institutions and large and highly complex institutions, except as provided in paragraph (f) of this section, shall be as prescribed in the schedule in the following table:

TABLE 4 TO PARAGRAPH (b)(2) INTRODUCTORY TEXT—TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)[1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT[2]

	Established small institutions			Large & highly complex institutions
	CAMELS composite			
	1 or 2	3	4 or 5	
Initial Base Assessment Rate	5 to 18	8 to 32	18 to 32	5 to 32
Unsecured Debt Adjustment	−5 to 0	−5 to 0	−5 to 0	−5 to 0
Brokered Deposit Adjustment	N/A	N/A	N/A	0 to 10
Total Base Assessment Rate	2.5 to 18	4 to 32	13 to 32	2.5 to 42

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(i) *CAMELS composite 1- and 2-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 1 or 2 shall range from 2.5 to 18 basis points.

(ii) *CAMELS composite 3-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 3 shall range from 4 to 32 basis points.

(iii) *CAMELS composite 4- and 5-rated established small institutions total base assessment rate schedule.* The annual total base assessment rates for all established small institutions with a CAMELS composite rating of 4 or 5 shall range from 13 to 32 basis points.

(iv) *Large and highly complex institutions total base assessment rate schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 2.5 to 42 basis points.

* * * * *

(e) * * *

(1) * * *

(i) *Assessment rate schedules for new large and highly complex institutions once the DIF reserve ratio first reaches 1.15 percent on or after June 30, 2016 and through the assessment period ending December 31, 2022.* In the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, new large and new highly complex institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (a) of this section.

(ii) *Assessment rate schedules for new large and highly complex institutions beginning the first assessment period of 2023 and for all subsequent periods.* Beginning in the first assessment period of 2023 and for all subsequent assessment periods, new large and new highly complex institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (b) of this section.

(iii) *Assessment rate schedules for new small institutions beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022*—(A) *Initial base assessment rate schedule for new small institutions.* In the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, the initial base assessment rate for a new small institution shall be the rate prescribed in the schedule in the following table:

TABLE 9 TO PARAGRAPH (e)(1)(iii)(A) INTRODUCTORY TEXT—INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD HAS REACHED 1.15 PERCENT, AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS THROUGH THE ASSESSMENT PERIOD ENDING DECEMBER 31, 2022[1]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	7	12	19	30

[1] All amounts for all risk categories are in basis points annually.

(*1*) *Risk category I initial base assessment rate schedule.* The annual initial base assessment rates for all new small institutions in Risk Category I shall be 7 basis points.

(*2*) *Risk category II, III, and IV initial base assessment rate schedule.* The annual initial base assessment rates for all new small institutions in Risk Categories II, III, and IV shall be 12, 19, and 30 basis points, respectively.

(B) *Total base assessment rate schedule for new small institutions.* In the first assessment period after June 30, 2016, that the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15

percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, the total base assessment rates after adjustments for a new small institution shall be the rate prescribed in the schedule in the following table:

TABLE 10 TO PARAGRAPH (e)(1)(iii)(B) INTRODUCTORY TEXT—TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)[1] BEGINNING THE FIRST ASSESSMENT PERIOD AFTER JUNE 30, 2016, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD HAS REACHED 1.15 PERCENT, AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS THROUGH THE ASSESSMENT PERIOD ENDING DECEMBER 31, 2022[2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	7	12	19	30
Brokered Deposit Adjustment (added)	N/A	0 to 10	0 to 10	0 to 10
Total Base Assessment Rate	7	12 to 22	19 to 29	30 to 40

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(*1*) *Risk category I total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category I shall be 7 basis points.

(*2*) *Risk category II total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category II shall range from 12 to 22 basis points.

(*3*) *Risk category III total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category III shall range from 19 to 29 basis points.

(*4*) *Risk category IV total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category IV shall range from 30 to 40 basis points.

(iv) *Assessment rate schedules for new small institutions beginning the first assessment period of 2023 and for all subsequent assessment periods*—(A) *Initial base assessment rate schedule for new small institutions.* Beginning in the first assessment period of 2023 and for all subsequent assessment periods, the initial base assessment rate for a new small institution shall be the rate prescribed in the schedule in the following table, even if the reserve ratio equals or exceeds 2 percent or 2.5 percent:

TABLE 11 TO PARAGRAPH (e)(1)(iv)(A) INTRODUCTORY TEXT—INITIAL BASE ASSESSMENT RATE SCHEDULE BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023 AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS[1]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	9	14	21	32

[1] All amounts for all risk categories are in basis points annually.

(*1*) Risk category I initial base assessment rate schedule. The annual initial base assessment rates for all new small institutions in Risk Category I shall be 9 basis points.

(*2*) *Risk category II, III, and IV initial base assessment rate schedule.* The annual initial base assessment rates for all new small institutions in Risk Categories II, III, and IV shall be 14, 21, and 32 basis points, respectively.

(B) *Total base assessment rate schedule for new small institutions.* Beginning in the first assessment period of 2023 and for all subsequent assessment periods, the total base assessment rates after adjustments for a new small institution shall be the rate prescribed in the schedule in the following table, even if the reserve ratio equals or exceeds 2 percent or 2.5 percent:

TABLE 12 TO PARAGRAPH (e)(1)(iv)(B) INTRODUCTORY TEXT—TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)[1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023 AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS[2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial Assessment Rate	9	14	21	32
Brokered Deposit Adjustment (added)	N/A	0 to 10	0 to 10	0 to 10
Total Base Assessment Rate	9	14 to 24	21 to 31	32 to 42

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(*1*) *Risk category I total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category I shall be 9 basis points.

(*2*) *Risk category II total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category II shall range from 14 to 24 basis points.

(*3*) *Risk category III total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category III shall range from 21 to 31 basis points.

(*4*) *Risk category IV total assessment rate schedule.* The annual total base assessment rates for all new small institutions in Risk Category IV shall range from 32 to 42 basis points.

(2) * * *

(i) *Beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, where the reserve ratio as of the end of the prior assessment period is less than 2 percent.* In the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods through the assessment period ending December 31, 2022, where the reserve ratio as of the end of the prior assessment period is less than 2 percent, the initial and total base assessment rates for an insured branch of a foreign bank, except as provided in paragraph (f) of this section, shall be the rate prescribed in the schedule in the following table:

TABLE 13 TO PARAGRAPH (e)(2)(i) INTRODUCTORY TEXT—INITIAL AND TOTAL BASE ASSESSMENT RATE SCHEDULE [1] BEGINNING THE FIRST ASSESSMENT PERIOD AFTER JUNE 30, 2016, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD HAS REACHED 1.15 PERCENT, AND FOR ALL SUBSEQUENT ASSESSMENT PERIODS THROUGH THE ASSESSMENT PERIOD ENDING DECEMBER 31, 2022, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial and Total Assessment Rate	3 to 7	12	19	30

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Initial and total base rates that are not the minimum or maximum rate will vary between these rates.

(A) *Risk category I initial and total base assessment rate schedule.* The annual initial and total base assessment rates for an insured branch of a foreign bank in Risk Category I shall range from 3 to 7 basis points.

(B) *Risk category II, III, and IV initial and total base assessment rate schedule.* The annual initial and total base assessment rates for Risk Categories II, III, and IV shall be 12, 19, and 30 basis points, respectively.

(C) All insured branches of foreign banks in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(ii) *Assessment rate schedule for insured branches of foreign banks beginning the first assessment period of 2023, where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent.* Beginning the first assessment period of 2023, where the reserve ratio of the DIF as of the end of the prior assessment period is less than 2 percent, the initial and total base assessment rates for an insured branch of a foreign bank, except as provided in paragraph (f) of this section, shall be the rate prescribed in the schedule in the following table:

TABLE 14 TO PARAGRAPH (e)(2)(ii) INTRODUCTORY TEXT—INITIAL AND TOTAL BASE ASSESSMENT RATE SCHEDULE [1] BEGINNING THE FIRST ASSESSMENT PERIOD OF 2023, WHERE THE RESERVE RATIO AS OF THE END OF THE PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT [2]

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial and Total Assessment Rate	5 to 9	14	21	32

[1] The depository institution debt adjustment, which is not included in the table, can increase total base assessment rates above the maximum assessment rates shown in the table.

[2] All amounts for all risk categories are in basis points annually. Initial and total base rates that are not the minimum or maximum rate will vary between these rates.

(A) *Risk category I initial and total base assessment rate schedule.* The annual initial and total base assessment rates for an insured branch of a foreign bank in Risk Category I shall range from 5 to 9 basis points.

(B) *Risk category II, III, and IV initial and total base assessment rate schedule.* The annual initial and total base assessment rates for Risk Categories II, III, and IV shall be 14, 21, and 32 basis points, respectively.

(C) *Same initial base assessment rate.* All insured branches of foreign banks in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

* * * * *

■ 6. Amend § 327.11 by revising paragraph (c)(3)(i) to read as follows:

§ 327.11 Surcharges and assessments required to raise the reserve ratio of the DIF to 1.35 percent.

* * * * *

(c) * * *

(3) * * *

(i) *Fraction of quarterly regular deposit insurance assessments paid by credit accruing institutions.* The fraction of assessments paid by credit accruing institutions shall equal quarterly deposit insurance assessments, as determined under § 327.16, paid by such institutions for each assessment period during the credit calculation period, divided by the total amount of quarterly deposit insurance assessments paid by all insured depository institutions during the credit calculation period, excluding the aggregate amount of

surcharges imposed under paragraph (b) of this section.

* * * * *

■ 7. Amend § 327.16 as follows:
■ a. Redesignate paragraphs (a)(1)(i)(A) through (C) as (a)(1)(i)(B) through (D), respectively;
■ b. Add new paragraph (a)(1)(i)(A);
■ c. Revise newly redesignated paragraph (a)(1)(i)(B);
■ d. Redesignate paragraphs (d)(4)(ii)(A) through (C) as (d)(4)(ii)(B) through (D), respectively;
■ e. Add new paragraph (d)(4)(ii)(A); and
■ f. Revise newly redesignated paragraph (d)(4)(ii)(B).

The revisions and additions read as follows:

§ 327.16 Assessment pricing methods—beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent.

* * * * *

(a) * * *

(1) * * *

(i) *Uniform amount.* Except as adjusted for the actual assessment rates set by the Board under § 327.10(f), the uniform amount shall be:

(A) 7.352 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) 9.352 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

* * * * *

(d) * * *

(4) * * *

(ii) * * *

(A) −5.127 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) −3.127 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

* * * * *

■ 8. Amend appendix A to subpart A of part 327 as follows:
■ a. Revise sections I through III;
■ b. Remove sections IV and V; and
■ c. Redesignate section VI as section IV;

The revisions read as follows:

Appendix A to Subpart A of Part 327—Method To Derive Pricing Multipliers and Uniform Amount

I. Introduction

The uniform amount and pricing multipliers are derived from:

- A model (the Statistical Model) that estimates the probability of failure of an institution over a three-year horizon;
- The minimum initial base assessment rate;
- The maximum initial base assessment rate;
- Thresholds marking the points at which the maximum and minimum assessment rates become effective.

II. The Statistical Model

The Statistical Model estimates the probability of an insured depository institution failing within three years using a logistic regression and pooled time-series cross-sectional data; [1] that is, the dependent variable in the estimation is whether an insured depository institution failed during the following three-year period. Actual model parameters for the Statistical Model are an average of each of three regression estimates for each parameter. Each of the three regressions uses end-of-year data from insured depository institutions' quarterly reports of condition and income (Call Reports and Thrift Financial Reports or TFRs [2]) for every third year to estimate probability of failure within the ensuing three years. One regression (Regression 1) uses insured depository institutions' Call Report and TFR data for the end of 1985 and failures from 1986 through 1988; Call Report and TFR data for the end of 1988 and failures from 1989 through 1991; and so on, ending with Call Report data for the end of 2009 and failures from 2010 through 2012. The second regression (Regression 2) uses insured depository institutions' Call Report and TFR data for the end of 1986 and failures from 1987 through 1989, and so on, ending with Call Report data for the end of 2010 and failures from 2011 through 2013. The third regression (Regression 3) uses insured depository institutions' Call Report and TFR data for the end of 1987 and failures from 1988 through 1990, and so on, ending with Call Report data for the end of 2011 and failures from 2012 through 2014. The regressions include only Call Report data and failures for established small institutions.

[1] Tests for the statistical significance of parameters use adjustments discussed by Tyler Shumway (2001) ''Forecasting Bankruptcy More Accurately: A Simple Hazard Model,'' Journal of Business 74:1, 101–124.

[2] Beginning in 2012, all insured depository institutions began filing quarterly Call Reports and the TFR was no longer filed.

Table A.1 lists and defines the explanatory variables (regressors) in the Statistical Model.

TABLE A.1—DEFINITIONS OF MEASURES USED IN THE FINANCIAL RATIOS METHOD

Variables	Description
Leverage Ratio (%)	Tier 1 capital divided by adjusted average assets. (Numerator and denominator are both based on the definition for prompt corrective action.)
Net Income before Taxes/Total Assets (%).	Income (before applicable income taxes and discontinued operations) for the most recent twelve months divided by total assets.[1]
Nonperforming Loans and Leases/Gross Assets (%).	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest and total nonaccrual loans and lease financing receivables (excluding, in both cases, the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored enterprises, under guarantee or insurance provisions) divided by gross assets.[2] [3]
Other Real Estate Owned/Gross Assets (%).	Other real estate owned divided by gross assets.[2]
Brokered Deposit Ratio	The ratio of the difference between brokered deposits and 10 percent of total assets to total assets. For institutions that are well capitalized and have a CAMELS composite rating of 1 or 2, reciprocal deposits are deducted from brokered deposits. If the ratio is less than zero, the value is set to zero.
Weighted Average of C, A, M, E, L, and S Component Ratings.	The weighted sum of the ''C,'' ''A,'' ''M,'' ''E'', ''L'', and ''S'' CAMELS components, with weights of 25 percent each for the ''C'' and ''M'' components, 20 percent for the ''A'' component, and 10 percent each for the ''E'', ''L'', and ''S'' components. In instances where the ''S'' component is missing, the remaining components are scaled by a factor of 10/9.[4]
Loan Mix Index	A measure of credit risk described below.
One-Year Asset Growth (%)	Growth in assets (adjusted for mergers[5]) over the previous year in excess of 10 percent.[6] If growth is less than 10 percent, the value is set to zero.

[1] For purposes of calculating actual assessment rates (as opposed to model estimation), the ratio of Net Income before Taxes to Total Assets is bounded below by (and cannot be less than) −25 percent and is bounded above by (and cannot exceed) 3 percent. For purposes of model estimation only, the ratio of Net Income before Taxes to Total Assets is defined as income (before income taxes and extraordinary items and other adjustments) for the most recent twelve months divided by total assets.

[2] For purposes of calculating actual assessment rates (as opposed to model estimation), ''Gross assets'' are total assets plus the allowance for loan and lease financing receivable losses (ALLL); for purposes of estimating the Statistical Model, for years before 2001, when allocated transfer risk was not included in ALLL in Call Reports, allocated transfer risk is included in gross assets separately.

[3] Delinquency and non-accrual data on government guaranteed loans are not available for the entire estimation period. As a result, the Statistical Model is estimated without deducting delinquent or past-due government guaranteed loans from the nonperforming loans and leases to gross assets ratio.

[4] The component rating for sensitivity to market risk (the ''S'' rating) is not available for years before 1997. As a result, and as described in the table, the Statistical Model is estimated using a weighted average of five component ratings excluding the ''S'' component where the component is not available.

[5] Growth in assets is also adjusted for acquisitions of failed banks.

[6] For purposes of calculating actual assessment rates (as opposed to model estimation), the maximum value of the One-Year Asset Growth measure is 230 percent; that is, asset growth (merger adjusted) over the previous year in excess of 240 percent (230 percentage points in excess of the 10 percent threshold) will not further increase a bank's assessment rate.

The financial variable measures used to estimate the failure probabilities are obtained from Call Reports and TFRs. The weighted average of the ''C,'' ''A,'' ''M,'' ''E'', ''L'', and ''S'' component ratings measure is based on component ratings obtained from the most recent bank examination conducted within 24 months before the date of the Call Report or TFR.

The Loan Mix Index assigns loans to the categories of loans described in Table A.2. For each loan category, a charge-off rate is calculated for each year from 2001 through 2014. The charge-off rate for each year is the aggregate charge-off rate on all such loans held by small institutions in that year. A weighted average charge-off rate is then calculated for each loan category, where the weight for each year is based on the number of small-bank failures during that year.[3] A Loan Mix Index for each established small institution is calculated by: (1) multiplying the ratio of the institution's amount of loans in a particular loan category to its total assets by the associated weighted average charge-off rate for that loan category; and (2) summing the products for all loan categories. Table A.2 gives the weighted average charge-off rate for each category of loan, as calculated through the end of 2014. The Loan Mix Index excludes credit card loans.

[3] An exception is ''Real Estate Loans Residual,'' which consists of real estate loans held in foreign offices. Few small insured depository institutions report this item and a statistically reliable estimate of the weighted average charge-off rate could not be obtained. Instead, a weighted average of the weighted average charge-off rates of the other real estate loan categories is used. (The other categories are construction & development, multifamily residential, nonfarm nonresidential, 1–4 family residential, and agricultural real estate.) The weight for each of the other real estate loan categories is based on the aggregate amount of the loans held by small insured depository institutions as of December 31, 2014.

TABLE A.2—LOAN MIX INDEX CATEGORIES

	Weighted charge-off rate percent
Construction and Development	4.4965840
Commercial & Industrial	1.5984506
Leases	1.4974551
Other Consumer	1.4559717
Loans to Foreign Government	1.3384093
Real Estate Loans Residual	1.0169338
Multifamily Residential	0.8847597
Nonfarm Nonresidential	0.7286274
1–4 Family Residential	0.6973778
Loans to Depository banks	0.5760532
Agricultural Real Estate	0.2376712
Agriculture	0.2432737

For each of the three regression estimates (Regression 1, Regression 2 and Regression 3), the estimated probability of failure (over a three-year horizon) of institution *i* at time *T* is

Equation 1

$$P_{iT} = 1/((1+ \exp(-Z_{iT}))$$

where

Equation 2

$Z_{iT} = \beta_0 + \beta_1$ (Leverage Ratio$_{iT}$) + β_2 (Nonperforming loans and leases ratio$_{iT}$) + β_3 (Other real estate owned ratio$_{iT}$) + β_4 (Net income before taxes ratio$_{iT}$) + β_5 (Brokered deposit ratio$_{iT}$) + β_6 (Weighted average CAMELS component rating$_{iT}$) + β_7 (Loan mix index$_{iT}$) + β_8 (One-year asset growth$_{iT}$)

where the β variables are parameter estimates. As stated earlier, for actual assessments, the β values that are applied are averages of each of the individual parameters over three separate regressions. Pricing multipliers (discussed in the next section) are based on Z_{iT}.[4]

[4] The Z_{iT} values have the same rank ordering as the probability measures P_{iT}.

III. Derivation of Uniform Amount and Pricing Multipliers

The uniform amount and pricing multipliers used to compute the annual initial base assessment rate in basis points, R_{iT}, for any such institution *i* at a given time *T* will be determined from the Statistical Model as follows:

Equation 3

$R_{iT} = \alpha_0 + \alpha_1 * Z_{iT}$ subject to $Min \leq R_{iT} \leq Max$[5]

where α_0 and α_1 are a constant term and a scale factor used to convert Z_{iT} to an assessment rate, *Max* is the maximum initial base assessment rate in effect and *Min* is the minimum initial base assessment rate in effect. (R_{iT} is expressed as an annual rate, but the actual rate applied in any quarter will be $R_{iT}/4$.)

[5] R_{iT} is also subject to the minimum and maximum assessment rates applicable to established small institutions based upon their CAMELS composite ratings.

Solving equation 3 for minimum and maximum initial base assessment rates simultaneously,

$Min = \alpha_0 + \alpha_1 * Z_N$ and $Max = \alpha_0 + \alpha_1 * Z_X$

where Z_X is the value of Z_{iT} above which the maximum initial assessment rate (*Max*) applies and Z_N is the value of Z_{iT} below which the minimum initial assessment rate (*Min*) applies, results in values for the constant amount, α_0, and the scale factor, α_1:

Equation 4

$$\alpha_0 = Min - \frac{Z_N * (Max - Min)}{Z_X - Z_N}$$

Equation 5

$$\alpha_1 = \frac{Max - Min}{Z_X - Z_N}$$

The values for Z_X and Z_N will be selected to ensure that, for an assessment period shortly before adoption of a final rule, aggregate assessments for all established small institutions would have been approximately the same under the final rule as they would have been under the assessment rate schedule that—under rules in effect before adoption of the final rule—will automatically go into effect when the reserve ratio reaches 1.15 percent. As an example, using aggregate assessments for all established small institutions for the third quarter of 2013 to determine Z_X and Z_N, and assuming that *Min* had equaled 3 basis points and *Max* had equaled 30 basis points, the value of Z_X would have been 0.87 and the value of Z_N −6.36. Hence based on equations 4 and 5,

$\alpha_0 = 26.751$ and
$\alpha_1 = 3.734$.

Therefore from equation 3, it follows that

Equation 6

$R_{iT} = 26.751 + 3.734 * Z_{iT}$ subject to $3 \leq R_{iT} \leq 30$

Substituting equation 2 produces an annual initial base assessment rate for institution *i* at time *T*, R_{iT}, in terms of the uniform amount, the pricing multipliers and model variables:

Equation 7

$R_{iT} = [26.751 + 3.734 * \beta_0] + 3.734 * [\beta_1 (\text{Leverage ratio}_{iT})] + 3.734 * \beta_2 (\text{Nonperforming loans and leases ratio}_{iT}) + 3.734 * \beta_3 (\text{Other real estate owned ratio}_{iT}) + 3.734 * \beta_4 (\text{Net income before taxes ratio}_{iT}) + 3.734 * \beta_5 (\text{Brokered deposit ratio}_{iT}) + 3.734 * \beta_6 (\text{Weighted average CAMELS component rating}_{iT}) + 3.734 * \beta_7 (\text{Loan mix index}_{iT}) + 3.734 * \beta_8 (\text{One-year asset growth}_{iT})$

again subject to $3 \leq R_{iT} \leq 30$ [6]

where $26.751 + 3.734 * \beta_0$ equals the uniform amount, $3.734 * \beta_j$ is a pricing multiplier for the associated risk measure *j*, and *T* is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed.

[6] As stated above, R_{iT} is also subject to the minimum and maximum assessment rates applicable to established small institutions based upon their CAMELS composite ratings.

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 21, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–13578 Filed 6–30–22; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No.: 220616–0136]

RIN 0691–AA93

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2022 BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The BE–12 survey is conducted every five years; the prior survey covered 2017. The benchmark survey covers the universe of foreign direct investment in the United States and is BEA's most detailed survey of such investment. For the 2022 BE–12 survey, BEA proposes changes in data items collected, the design of the survey forms, and the reporting requirements for the survey to satisfy changing data needs and to improve data quality and the effectiveness and efficiency of data collection.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before August 30, 2022.

ADDRESSES: You can submit comments, identified by RIN 0691–AA93, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2022–0003.''
- *Email: Kirsten.Brew@bea.gov.*
- *Mail:* Multinational Operations Branch, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49, Washington, DC 20233.
- *Hand Delivery/Courier:* Multinational Operations Branch, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49, 4600 Silver Hill Road, Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent both to BEA through any of the methods above and to the Office of Management and Budget (OMB) by submitting comments at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review'' or by using the search function and entering the title of the collection.

Public Inspection: All comments received are a part of the public record and will generally be posted to *https://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kirsten Brew, Chief, Multinational Operations Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20233; email *Kirsten.Brew@bea.gov* or phone (301) 278–9152.

SUPPLEMENTARY INFORMATION: The BE–12, Benchmark Survey of Foreign Direct

Investment in the United States, is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' The data reported to BEA through this survey are confidential and may be used only for analytical and statistical purposes. A response is required from persons subject to the reporting requirements of the BE–12, whether or not they are contacted by BEA.

The BE–12 survey covers the universe of foreign direct investment in the United States in terms of value and is BEA's most detailed survey of such investment. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the BE–12 survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in non-benchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the activities of the U.S. affiliates of foreign companies.

This proposed rule would amend 15 CFR 801 to set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA).

Description of Changes

The proposed changes would amend the regulations and the survey forms for the BE–12 benchmark survey. These amendments include changes in data items collected and the design of the survey forms.

BEA proposes to add, delete, and modify some items on the BE–12 survey forms. Most of the additions are proposed in response to suggestions from data users and to provide more information about foreign direct investment in the United States. The following items would be added to, or modified on, the BE–12 survey:

(1) A question will be added to collect the city of each foreign parent and ultimate beneficial owner (UBO) on all forms. This will be used to validate the countries of foreign investors and provide additional information on the location of investors.

(2) The balance sheet and income statement sections on the BE–12A form will be modified to separately collect the investment in, and income from, (a) ''unconsolidated U.S. affiliates'' and (b) ''foreign entities,'' which were previously collected as a combined total. This will assist in ensuring complete coverage of unconsolidated U.S. affiliates and in better aligning the BE–12 survey data with other direct investment surveys.

(3) Supplemental sections A and B, which collect identification information on business enterprises owned by the U.S. affiliate, will be modified on all BE–12 forms to request more information on the reasons the U.S. business enterprises changed since the last report. This will include options for ''newly acquired'' or ''newly established'' if an enterprise is being reported on a supplement for the first time, and options to report U.S. business enterprises that had a name change, were sold, merged or liquidated. A follow-up question will be added requesting the date of the corporate change for new enterprises. This information will allow BEA to inform entities about potential reporting requirements on other surveys of foreign direct investment in the United States.

(4) Questions will be added on the BE–12A form to collect sales data for certain service types where there is no clear link between the industry of sales and the type of services supplied. Those service types are (1) intellectual property (IP) rights and (2) advertising. These questions will contribute to BEA's efforts to develop a more complete and consistent picture of the types of services supplied by U.S. companies worldwide.

(5) Questions will be added to collect sales data on the BE–12A form related to the provision of selected services generally recognized as prevalent in the digital economy. These selected services are (1) cloud computing and data storage and (2) digital intermediation services. In addition, checkboxes will be added to the BE–12A for respondents to identify the percentage of their sales of services delivered remotely, sales of services that were digitally ordered, and sales of goods that were digitally ordered, along with checkboxes to identify if this information was sourced from their accounting records or from recall/general knowledge. These questions will contribute to BEA's efforts to measure the digital economy.

BEA also proposes to eliminate the following items from the benchmark survey:

(1) Expensed petroleum and mining expenditures will be removed from the BE–12A form.

(2) Commercial property will be removed from the state schedule of the BE–12A and BE–12B forms. Respondents have been confused by this concept, which can vary by state or industry, and have indicated that the information may not be readily available from their records.

(3) Part III of the BE–12A and BE–12B forms, which collects information on investment and transactions between the U.S. affiliate and the affiliated foreign group will be scaled back to include only the following items:

- Foreign parent ownership and classification information
- A question on reverse investment
- Intercompany debt balances for U.S. affiliates with less than $60 million in assets, sales, or net income.

BEA will also modify the survey forms to improve question wording, layout, and instructions.

This proposed rule would amend 15 CFR part 801 by modifying § 801.10 to clarify the timing of this benchmark survey. The next BE–12 survey will apply to the 2022 fiscal reporting year, and will be conducted once every five years thereafter, for reporting years ending in 2 and 7.

Each time a benchmark survey is to be conducted, BEA will describe any proposed changes to the information collected through the survey (including the addition, deletion, and/or modification of existing questions and definitions) in a public notice and will solicit comments as part of the requirements of the Paperwork Reduction Act (PRA). Any changes to reporting requirements or significant

expansions in scope of the surveys would be conducted by rulemaking.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608–0042.

Notwithstanding any other provisions 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 displays a currently valid OMB control number.

The BE–12 survey, as proposed, is expected to result in the filing of reports from approximately 26,400 U.S. affiliates. Total annual burden is calculated by multiplying the estimated number of submissions of each form (A, B, C, and Claim for Not Filing) by the average hourly burden per form and summing the results for the four forms. The total respondent burden for this survey is estimated at 276,441 hours, compared to 249,625 hours for the previous (2017) benchmark survey. An increase in the number of foreign-owned companies accounts for nearly all of the increase in the estimated respondent burden, while the addition of new questions and the deletion of previous questions had a marginal impact on the estimated respondent burden. The respondent burden will vary from one company to another. The estimated average time per respondent is 10.5 hours (276,441 hours/26,400 respondents) per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

Most of the U.S. business enterprises that are required to file the survey are units of multinational enterprises. To qualify as a small business, the multinational enterprise as a whole must be evaluated when determining if the business meets the size standards set by the Small Business Administration. While BEA only collects information on the U.S. portion of the multinational enterprise, the size determination takes into account the sizes of both the U.S. businesses and their foreign parents. BEA estimates that approximately 15 percent of the U.S. businesses that will be required to respond to the BE–12 survey are considered small businesses based on the SBA size standards.

For the relatively few small businesses that meet the reporting requirements of the survey, BEA has attempted to keep burden to a minimum by asking a limited number of questions. The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales, or net income or loss. The reporting thresholds for Form BE–12A (the longest form) and Form BE–12B are $300 million and $60 million, respectively. All affiliates below $60 million will file on Form BE–12C (the shortest form). The smallest affiliates, those below $20 million, are only required to report a few items on Form BE–12C. These data items are likely to be readily available from existing business records. Compliance with the survey should take less than one hour. Because few small businesses are required to file the survey and because those impacted are subject to only minimal reporting burden, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign direct investment in the United States, International transactions, Multinational enterprises, Penalties, Reporting and record keeping requirements.

Paul W. Farello,

Associate Director of International Economics, Bureau of Economic Analysis

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, and 801.10, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information that is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

■ 3. Amend § 801.10 to read as follows:

§ 801.10 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted once every

five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments accounting to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant this section. This may be accomplished by filing a properly completed BE–12 report (BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing);

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate (except certain private funds as described below), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in the calendar year covered by the survey. Certain private funds are exempt from reporting on the BE–12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE–12 form except to indicate exemption from the survey if contacted by BEA: (1) The U.S. business enterprise is a private fund; (2) the private fund does not own, directly or indirectly through another business enterprise, an ''operating company''—*i.e.,* a business enterprise that is not a private fund or a holding company—in which the foreign parent owns at least 10 percent of the voting interest; AND (3) if the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. ''operating companies'' between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE–12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, if any one of the following three items for the U.S. affiliate (not just the foreign parent's share) was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE–12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) but none of these items was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, a ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(3) Form BE–12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Any U.S. person that is contacted by BEA concerning the BE–12 survey, but is not subject to the reporting requirements, must file a BE–12 Claim for Not Filing. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing is due to be filed with BEA not later than May 31 of the year after the year covered by the survey (or by June 30 for reporting companies that use BEA's eFile system).

[FR Doc. 2022–14100 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket Nos. RM22–16–000 and AD21–13–000]

One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Electric System Reliability

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is initiating this rulemaking to propose to direct transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments. The Commission proposes to define extreme weather vulnerability assessments as analyses that identify where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations. Specifically, the Commission proposes to require transmission providers to submit a one-time informational report on how they establish a scope for their extreme weather vulnerability assessments,

develop inputs, identify vulnerabilities and determine exposure to extreme weather hazards, estimate the costs of impacts, and develop mitigation measures to address extreme weather risks.

DATES: Initial comments are due August 30, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. 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.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Neal Anderson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8760, *Neal.Anderson@ferc.gov*

Alyssa Meyer (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6835, *Alyssa.Meyer@ferc.gov*

SUPPLEMENTARY INFORMATION

I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to require each transmission provider [1] to file a one-time informational report pursuant to § 304 of the Federal Power Act (FPA).[2] In the one-time reports, transmission providers would describe their current or planned policies and processes for conducting extreme weather vulnerability assessments. The Commission believes that these reports will assist in its administration of the FPA.

2. The reliability of the electric grid is increasingly threatened by extreme weather events and climate change. While extreme weather has impacted the electric grid throughout its history, the severity and frequency of extreme weather events is increasing.[3] A robust and growing body of scientific evidence attributes this trend to climate change and indicates that the tendency toward more frequent and more severe weather events will persist.[4] In light of this trend, we believe it is increasingly important to understand how the risks of extreme weather to the electric grid are evaluated and mitigated.

3. Reliable electric service is vital to the nation's economy, national security, and public health and safety, and prolonged power outages can have significant humanitarian consequences, as the nation witnessed in Texas and the South-Central United States in February 2021 during Winter Storm Uri. More

[1] In this NOPR, unless otherwise noted, we use the term ''transmission provider'' to mean any public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce. *See* 16 U.S.C. 824(e); 18 CFR 35.28. To be clear, this term encompasses public utility transmission owners that are members of Regional Transmission Organizations (RTO) and Independent System Operators (ISO). Accordingly, the reports we are proposing herein would be filed by the public utility members of RTOs/ISOs, as well as by the RTOs/ISOs themselves and other public utility transmission providers.

[2] 16 U.S.C. 825c. Section 304 of the FPA provides that ''every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of'' the FPA. *Id.*

[3] National Oceanic and Atmospheric Administration, National Centers for Environmental Information ''U.S. Billion-Dollar Weather and Climate Disasters'' (2022), *https://www.ncei.noaa.gov/access/billions/.*

[4] Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation, and Vulnerability (2022); Nat'l Academies of Sciences, Engineering, and Medicine, Attribution of Extreme Weather Events in the Context of Climate Change (2016); Herring, S.C., N. Christidis, A. Hoell, M.P. Hoerling, and P.A. Stott, Eds. *Explaining Extreme Events of 2020 from a Climate Perspective.* 103 Bulletin Am. Meteor. Soc'y 3 (2022).

than four and half million people in Texas alone lost power during the extreme weather event, and in some cases the outages contributed to a tragic loss of life.[5] Additionally, this extreme weather event had a significant impact to consumers as energy prices rose to historic levels in the wholesale markets serving Texas and the South-Central region during the event.[6]

4. Winter Storm Uri is but one tragic example of the threat extreme weather is posing across the entire country. In the last two years alone,[7] region-wide heat waves, hurricanes, and wildfires have resulted in outages or other significant reliability impacts, often while contributing to substantial consumer costs. In August 2020, California experienced rolling blackouts during a West-wide extreme heat event that impacted nearly a half million customers.[8] Hurricane Ida resulted in outages for more than a million customers across eight states in August 2021,[9] with the most severe impacts in Louisiana due to the collapse of a transmission tower and outage of more than 2,000 miles of transmission lines outside of New Orleans. [10] Some customers continued to lack electricity nearly a month after Ida's landfall.[11] In July 2021, wildfires in Oregon impacted crucial transmission capacity, limiting the ability to import electricity into California as temperatures soared above 100 degrees, ultimately triggering emergency actions to avoid reliability impacts.[12] At the same time, constrained conditions on the electric grid that result from such extreme weather events can increase electricity prices.[13]

5. Looking forward, the threats of extreme weather and climate change are expected to continue to challenge the reliability of our electric grid. This upcoming summer, NERC expects extreme drought conditions and above-average temperatures across wide areas of North America, resulting in heightened reliability risk.[14] Drought increases reliability risk because it can reduce availability of generation during periods of high peak demand. Drought may impact energy output from hydro generators as well as generators that depend upon once-through cooling as low water levels trigger conservation measures.[15] Above-average temperatures exacerbate reliability risk by contributing to prolonged periods of high electricity demand and to higher forced outage rates for generation and other elements of the bulk power system. NERC also projects above-normal fire risk across U.S. South Central states, Northern California, Oregon, and Canada this summer, which poses the risk of impacts to the transmission system, potentially reducing output of solar PV generation due to smoke.[16]

6. NERC also evaluated these risks over the long-term in its December 2021 Long Term Reliability Assessment and identified extreme weather among the top risks that stakeholders and policymakers need to focus on over the next ten years.[17] NERC concluded in particular that wide-area and long duration extreme weather events driven by climate change threaten reliability over the long-term. NERC identified a combination of factors that make such extreme weather events a threat to reliability. Changes in climatology and the electrical system can increase the volatility and uncertainty of electricity demand and thus the risk that grid operators are unprepared for the peak demands that accompany extreme weather. Further, when extreme temperatures extend over a wide area for a long duration, resources can be strained across multiple regions simultaneously, increasing the risk of shortfalls. At the same time, transmission networks can become stressed by wide-area events such as storms, wildfires, or heat waves, limiting imports of electricity that could relieve shortfalls. Both weather-dependent variable energy resources and thermal generation face risks of reduced output or increased outages due to extreme weather events (*e.g.,* frozen equipment, poor hydrological conditions).[18] While the nature of extreme weather and the extent of transmission impairments will vary across different regions of the United States, no region will be unaffected.

7. The Government Accountability Office (GAO) issued a report in May 2021 stating that climate change is expected to have far-reaching effects on the electricity grid that could cost billions and could affect the ability of grid operators to transmit electricity.[19] GAO identified potential impacts of climate change-driven extreme weather to the grid in every region of the United States, and discussed the risk that, absent measures to increase resilience, more frequent and severe weather associated with climate change may increase outages, imposing billions of dollars in additional costs to utility

[5] *FERC–NERC-Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States* 9 (Nov. 16, 2021), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and.*

[6] *See* Electric Reliability Council of Texas, *Review of February 2021 Extreme Cold Weather Event* 22 (2021), *https://www.ercot.com/files/docs/2021/03/03/Texas_Legislature_Hearings_2-25-2021.pdf* (average system wide pricing during event greater than $6000/MWh compared to $18–20/MWh in more typical conditions); Southwest Power Pool, Inc, *A Comprehensive Review of SPP's Response to the February 2021 Winter Storm* 72 (2021), *https://spp.org/documents/65037/comprehensive%20review%20of%20spp's%20response%20to%20the%20feb.%202021%20winter%20storm%202021%2007%2019.pdf* (''SPP experienced historically high market settlements for the impacted operating days''); Midcontinent Independent System Operator, *The February Artic Event: Event Details, Lessons Learned, and Implications for MISO's Reliability Imperative* 45 (2021), *https://cdn.misoenergy.org/2021%20Arctic%20Event%20Report554429.pdf* (Independent Market Monitor reports average energy prices rose 226 percent in February because of the Artic Event in February).

[7] Indeed, the North American Electric Reliability Corporation (NERC) found that all but one of the days in 2020 with the highest severity risk index, a quantitative measure of the relative severity of risks to the bulk power system, was attributed to some type of weather occurrence. NERC, *2021 State of Reliability Report* 42 (2021).

[8] *See* California Independent System Operator Corporation, *Final Root Cause Analysis: Mid-August 2020 Extreme Heat Wave* 35 (Jan. 13, 2021), *http://www.caiso.com/Documents/Final-Root-Cause-Analysis-Mid-August-2020-Extreme-Heat-Wave.pdf.*

[9] U.S. Energy Information Administration, *Hurricane Ida Caused At Least 1.2 Million Customers to Lose Power* (accessed June 1, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=49556.*

[10] *See* S. Van Voorhis, *Transmission Tower Destroyed by Ida Likely to Complicate Power Restoration in New Orleans, Experts Say* (Aug. 31, 2021), *https://www.utilitydive.com/news/transmission-tower-destroyed-by-ida-likely-to-complicate-power-restoration/605826/.*

[11] U.S. Department of Energy, *Hurricanes Ida and Nicholas Update # 20* (Sept. 23, 2021), *https://www.energy.gov/sites/default/files/2021-09/TLP-WHITE_DOE%20Situation%20Update_Hurricane%20Ida_20.pdf.*

[12] *See* California Independent System Operator Corporation, *California ISO Issues Flex Alert for Monday, July 12 Due to Wildfires, Heat* (July 11, 2021), *https://www.caiso.com/Documents/California-ISO-Issues-Flex-Alert-for-Monday-July-12-due-to-Wildfires-Heat.pdf.*

[13] *See e.g.,* Dale et al., *Assessing the Impact of Wildfires on the California Electricity Grid: A report for California's Fourth Climate Assessment* 16–18 (Aug. 2018), *https://www.energy.ca.gov/sites/default/files/2019-12/Forests_CCCA4-CEC-2018-002_ada.pdf* (estimating multi-million dollar costs increases per event due to disruption of transmission paths caused by wildfires).

[14] NERC, *2022 Summer Reliability Assessment* at 4, 7 (May 2022), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.*

[15] *Id.* at 4.

[16] *Id.* at 6, 8.

[17] NERC, *2021 Long-term Reliability Assessment* at 5–6 (Dec. 2021), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf.*

[18] *Id.* at 23–26.

[19] GAO, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-Reaching Effects and DOE and FERC Should Take Actions* (Mar. 2021), *https://www.gao.gov/products/gao-21-423t* (GAO Report).

customers. GAO recommended that the Commission take steps to identify or assess climate change risks to the grid in order to ensure it is well-positioned to determine the actions needed to enhance resilience to those risks.[20]

8. In light of recent extreme weather events which demonstrate their potential to substantially impact the reliability of the bulk power system and jurisdictional rates, as well as the series of assessments [21] concluding that climate change and extreme weather are expected to pose an ongoing and increasing threat to the electricity grid, we believe that a greater understanding of actions to assess the vulnerabilities of jurisdictional transmission assets and operations to extreme weather events is necessary to carry out our responsibilities under the FPA.[22] Therefore, we propose to direct transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments and developing solutions for mitigating identified extreme weather risks.

9. Requiring transmission providers to submit a one-time informational report on their current or planned efforts to assess the vulnerabilities of their jurisdictional transmission assets and operations to extreme weather events is necessary for ensuring just and reasonable rates. Requiring one-time reports on this information will also enhance transparency as well as provide opportunities for sharing best practices among transmission providers. Therefore, we propose to direct transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments.

10. For the purposes of this rulemaking, we propose to define an extreme weather vulnerability assessment as any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for transmission system operations.[23] We propose to require that these one-time informational reports be filed 90 days after the publication of any final rule in this proceeding in the **Federal Register**. We also propose to seek public comment on the reports 30 days after they are filed.

II. Background

A. Procedural History

11. On March 5, 2021, the Commission issued an initial Notice of Technical Conference stating that Commission staff would convene a technical conference to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events.[24] On March 15, 2021, the Commission issued a Supplemental Notice inviting pre-technical conference comments.[25]

12. During the technical conference, held on June 1 and 2, 2021, the Commission heard from utility executives, RTOs/ISOs and market monitor executives, state regulators and energy officials, and energy policy and reliability experts, as well as climatologists. Subsequently, a Notice Inviting Post-Technical Conference Comments was issued on August 11, 2021.[26] Panelists and commenters agreed that electric system planning processes need adjustment to adequately address the threat posed by climate change and extreme weather. Although individual utilities and states facing these threats can and do adjust their planning, operations, and restoration practices in response to climate change, there was widespread agreement that regular and ongoing information sharing and coordination across jurisdictions will be critical.[27] Panelists also recommended that such sharing not be limited to lessons learned, insofar as ongoing information sharing could also benefit entities developing climate models (*e.g.,* the National Oceanic and Atmospheric Administration (NOAA)) that may not always know what information is relevant to electric system planners and their stakeholders. Finally, there was agreement that the Commission should play a role in facilitating information sharing among industry stakeholders and government agencies.[28]

B. Need for Reports

13. Extreme weather events place the reliability of electric service at risk. As discussed above, the United States has witnessed several instances over just the past few years of how extreme weather has severely impacted several regions of the nation. The consequences to the electric system have included rolling blackouts, more extensive service disruptions, limited transmission capacity, and damaged electric infrastructure. These types of impacts not only harm system reliability and strain the grid, but they also affect Commission-jurisdictional rates. Moreover, the frequency and severity of extreme weather has been increasing—and is likely to continue to increase—and we are concerned that system reliability could be further jeopardized and that jurisdictional rates could be further affected.[29] Accordingly, we believe that, to assist in our administration of the FPA, it is critically important for the Commission to understand how transmission providers assess their vulnerabilities to extreme weather events. As we explain below, requiring transmission providers to submit a one-time report providing the information sought in this NOPR will enhance the Commission's ability to fulfill its obligations under the FPA.

14. Although the technical conference and technical conference comments underscored the importance of planning appropriately for extreme weather, the record to date does not provide the Commission with a clear understanding of whether and to what extent transmission providers are currently conducting, or planning to conduct, extreme weather vulnerability assessments, the method(s) used to conduct those assessments, and what is done with the information from those assessments.[30] Moreover, it is unclear the extent to which transmission providers regularly assess their vulnerabilities to extreme weather

[20] *Id.* at 18–19, 47.

[21] *See supra* notes 14, 17 & 19.

[22] 16 U.S.C. 824d, 824o.

[23] *See infra* P 20.

[24] March 5, 2021 Notice of Technical Conference, Docket No. AD21–13–000.

[25] March 15, 2021 Supplemental Notice of Technical Conference Inviting Comments, Docket No. AD21–13–000.

[26] August 11, 2021 Notice Inviting Post-Technical Conference Comments, Docket No. AD21–13–000.

[27] *See, e.g.,* June 2, 2021 Tr. 127 (Wayland), 129–130 (Howard); Columbia/EDF Pre-Conference Comments at 2; PJM Pre-Conference Comments at 6–9; East Kentucky Power Cooperative, Inc. Pre-Conference Comments at 6–8; CPUC Pre-Conference Comments at 19; Tabors Caramanis Rudkevich Pre-Conference Comments at 11–12, 20; Exelon Pre-Conference Comments at 23–24.

[28] *See, e.g.,* June 2, 2021 Tr. 127 (Wayland), 127–128 (Scripps), 129–130 (Howard), 132 (Terry); Exelon Pre-Conference Comments at 34; NARUC Pre-Conference Comments at 5–6.

[29] NERC's reports on both short-term and long-term weather issues discussed above highlight our concern regarding the impact of extreme weather on system reliability, as well as our concern that such events are likely to increase in severity of frequency.

[30] Based on the record developed during the technical conference, this practice does not appear to be widespread among transmission providers. For example, of the six jurisdictional RTOs/ISOs, only New York Independent System Operator, Inc. appears to have conducted such an assessment. Therefore, we believe that the proposed one-time informational reporting requirement will provide the necessary information for the Commission to understand the extent to which transmission providers are performing these assessments.

events.[31] But given the severe impacts resulting from extreme weather, as discussed above, we believe the Commission needs a better understanding of what transmission providers are doing—or not doing—with respect to assessing and mitigating extreme weather risks.

15. We are issuing this NOPR under § 304 of the FPA, which allows the Commission to order reports as the Commission may prescribe as ''necessary or appropriate to assist the Commission in the proper administration of'' the FPA.[32] We believe that our proposal here does precisely that because it will help ensure that the Commission fulfills its statutory obligations with respect to system reliability and just and reasonable rates. Under the FPA, the Commission is responsible for overseeing the development and enforcement of reliability standards for the Bulk-power System.[33] The Commission must also ensure that the rates, terms, and conditions of Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.[34] The reports we propose to require will enhance the Commission's understanding of whether, and if so, how transmission providers are assessing risks to transmission assets and operations as a result of extreme weather events. As noted above, we believe it is important for the Commission to understand whether and to what extent such assessments are being conducted to assist the Commission in the proper administration of the FPA.

16. For example, the failure to assess and mitigate the risks of extreme weather could increase the frequency of loss of load events and also impact consumers who could not only experience increased frequency of power outages but would also ultimately bear the financial burden to regularly rebuild damaged infrastructure or to pay for solutions that may be more costly than solutions that could have been identified through a more proactive, forward-looking process. Extreme weather events can also lead to extreme prices for wholesale electricity.[35] Notwithstanding these potentially severe impacts, the record in this proceeding does not indicate that most transmission providers have robust policies and processes for assessing and mitigating extreme weather vulnerabilities.

17. Additionally, transmission providers may face adverse impacts to their credit ratings and increased insurance costs, which could ultimately flow through into transmission rates. For example, credit rating agencies like Standard & Poor's and Moody's have added ''resiliency'' as a component of their rating criteria, indicating the relevance of extreme weather risk for creditworthiness.[36] Similarly, transmission providers could increasingly seek access to a higher level of insurance to cope with potential damage from more frequent and destructive weather-related events.[37] Finally, we believe that the one-time informational reports proposed in this NOPR will facilitate the sharing of best practices among transmission providers and their stakeholders for conducting extreme weather vulnerability assessments. At the technical conference, several commenters and panelists noted the importance of coordination and information sharing between entities in order to better assess and plan for extreme weather risks.[38] The information in these reports could serve as the basis for further information sharing and coordination, which could lead to improved or more robust assessments and thereby better avoid the adverse rate impacts discussed above.

18. Extreme weather events are occurring more frequently than ever before, and those events bring increased threats to system reliability and impacts on jurisdictional rates. Consistent with the GAO's recommendation noted above, the Commission needs to be well-positioned to take appropriate action consistent with its FPA obligations, if necessary. We believe that the reports we are proposing to require in this NOPR will help provide us with information necessary to assist us in administering the FPA.

III. Discussion

19. We propose to require transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments and mitigating identified extreme weather risks within 90 days of the publication of any final rule in this proceeding in the **Federal Register**. We propose to seek public comment on the reports 30 days after they are filed.

20. For the purposes of this proposed rulemaking, we propose to define an extreme weather vulnerability assessment as any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for transmission system operations. Such assessments can take different forms: they may be qualitative or quantitative; they may be performed on a periodic or ad hoc basis; and they may cover a narrower or broader range of extreme weather threats. The extreme weather threats analyzed by these reports may include those extreme weather events exacerbated by climate change (*e.g.,* extended heat waves or storm surge due to sea level rise).

21. Transmission providers may then use such extreme weather vulnerability assessments to develop mitigation in the form of extreme weather resilience plans, which outline measures to reduce the risk to vulnerable assets and operations. Extreme weather resilience efforts can take many forms, but generally involve both measures to prevent or minimize damage to vulnerable assets (*e.g.,* investments in asset hardening or relocation) and to manage the consequences of such damage when it occurs (*e.g.,* investments in system recoverability).[39]

22. To be clear, we do not intend in this NOPR to require transmission providers to conduct extreme weather vulnerability assessments where they do not do so already, or to require transmission providers to change how they conduct or plan to do such assessments.[40] Instead, the goal of this

[31] We recognize that transmission providers may be undertaking such vulnerability assessments. *See, e.g.,* Entergy Corporation (Entergy) Post-Conference Reply Comments at 1. But we nonetheless do not have much visibility into whether and how each transmission provider undertakes such assessments, and we propose to remedy that concern here.

[32] 16 U.S.C. 825c.

[33] *Id.* 824o.

[34] *Id.* 824d, 824e.

[35] During Winter Storm Uri, both the Midcontinent Independent System Operator and the Southwest Power Pool experienced prices exceeding the $2,000/MWh cap on incremental energy offers. FERC Staff, *2021 State of the Markets Report,* p. 30 (issued Apr. 21, 2022).

[36] F. Shafroth, *Climate Change and Credit Ratings* (Dec. 10, 2015), *https://www.governing.com/archive/gov-climate-change-credit-ratings.html.*

[37] *See, e.g.,* Oregon Public Utility Commission Pre-Conference Comments at 6–7, National Association of Mutual Insurance Companies Pre-Conference Comments at 1–3.

[38] *See* June 2, 2021 Tr. 102–103 (Moskowitz); Columbia/EDF Pre-Conference Comments at 2; PJM Pre-Conference Comments at 6–9.

[39] R.M. Webb, M. Panfil, and S. Ladin, *Climate Risk in the Electric Sector: Legal Obligations to Advance Climate Resilience Planning by Electric Utilities* 10 (Dec. 2020), *https://perma.cc/V25A-KBNP.*

[40] Similarly, while we propose that transmission providers may describe what they ''plan'' to do with respect to various issues, this is meant only to

proceeding is to gather information, not to establish new requirements. In addition, we do not propose that transmission providers submit the results of their extreme weather vulnerability assessments or include lists of affected assets and operations, specific vulnerabilities, or asset- or operation-specific mitigations in the informational reports proposed by this NOPR. Rather, we propose that the one-time informational reports focus on describing the current or planned policies and processes that respondents have in place, or plan to implement, to assess and mitigate extreme weather risks. We believe that this focus of the proposed one-time informational reports should avoid the need for respondents to file Critical Energy/Electric Infrastructure Information. However, to the extent transmission providers believe that information they will submit warrants protections, they may make a request for such treatment pursuant to §§ 388.112 and 388.113 of the Commission's regulations.[41]

23. Although commenters in Docket No. AD21–13–000 have referenced previously published guidance on conducting vulnerability assessments,[42] insufficient data exists to establish best practices. Therefore, we seek comments on our approach in directing such one-time informational reports, the proposed topics and questions discussed below, and the burden associated with submitting these reports. As further described below, we propose the one-time reports to address: (1) Scope; (2) Inputs; (3) Vulnerabilities and Exposure to Extreme Weather Hazards; (4) Costs of Impacts; and (5) Risk Mitigation.

24. While not all extreme weather vulnerability assessments must follow the same processes or include the same analyses, we understand the aforementioned topics to reflect typical practices and considerations in the development of extreme weather vulnerability assessments. Therefore, should respondents' processes and policies for developing their own extreme weather vulnerability assessments differ from those we describe below, we propose to require that transmission providers still describe in their one-time reports the processes and policies which most closely align with the intent or aim of the topics discussed below.

A. Scope

1. Background

25. Determining the scope of an extreme weather vulnerability assessment depends on the breadth of assets, operations, and extreme weather hazards that a transmission provider faces in its specific area. A narrower scope (*i.e.,* examining a subset of assets and operations, extreme weather hazards, or geographic regions in greater depth) can produce important insights related to specific facilities, systems, or regions, whereas a broader scope is more likely to identify system- and company-wide risks. For example, although Hurricane Sandy in 2012 initially motivated Consolidated Edison, Inc. (ConEd) to conduct its 2019 climate change vulnerability assessment, ConEd sought in its study to understand the broader impact of a changing climate on its service area and identified additional climate vulnerabilities including sea level rise, inland flooding due to increased precipitation, and extreme heat events.[43]

26. As part of scoping the extreme weather vulnerability assessment, transmission providers have the flexibility to choose the assets and operations to examine for their assessment. For example, some transmission providers focus their analyses on assets and operations related to critical electric infrastructure and/or assets and operations that meet or exceed some MW or other threshold.[44] Furthermore, transmission providers may use discretion to determine what extreme weather hazards and geographic scope to consider in their vulnerability assessment. Transmission providers could also consider external vulnerabilities in their assessment, such as those related to consumers, interconnected utilities, and supply chains. For example, with respect to external vulnerabilities, PG&E examined not only its own assets, but upstream interdependencies, including regional bulk electric and natural gas systems, water availability, telecommunication utilities, and supply chains, as well as downstream interdependencies like community- and customer-level resiliency.[45] With respect to geographic scope, although Entergy's service territory and assets extend across multiple states, its assessment, conducted with partners, focused exclusively on the 77 counties bordering the Gulf of Mexico. This specific geographic scope allowed Entergy and its partners to study the hazards unique to the Gulf region, driven by sea level rise, land subsidence, and increasing hurricane intensity.[46] A wider geographic scope may consider wide-area and long duration extreme weather events, such as the August 2020 West-wide extreme heat event described above.

27. Finally, a transmission provider may engage a broad set of stakeholders early in the scoping process to identify particularly susceptible regions in their footprint and increase support for any resilience actions that result from the extreme weather vulnerability assessment.[47] The Oregon Department of Energy, for example, engaged stakeholders from vulnerable and underserved communities in its climate

capture plans that have been made, but not yet been implemented; transmission providers are not required to speculate on how they would conduct extreme weather vulnerability analysis where they have no plans to do so.

[41] 18 CFR 388.112–113. Section 388.112 of the Commission's regulations specifies that any person submitting a document to the Commission may request privileged treatment for some or all of the information contained in a particular document that it claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, and that should be withheld from public disclosure. *See* 5 U.S.C. 552. Section 388.113 of the Commission's regulations governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information submitted to or generated by the Commission.

[42] Department of Energy, Office of Energy Policy and Systems Analysis, *Climate Change and the Electricity Sector: Guide for Climate Resilience Planning* (Sept. 2016), *https://toolkit.climate.gov/sites/default/files/Climate%20Change%20and%20the%20Electricity%20Sector%20Guide%20for%20Climate%20Change%20Resilience%20Planning%20September%202016_0.pdf* (DOE Guide); CPUC, *Climate Adaptation in the Electric Sector: Vulnerability Assessments & Resiliency Plans* (Jan 2016), *https://perma.cc/R6NW-F6GV* (CPUC Guide); J. Gundlach and R. Webb, *Climate Change Impacts on the Bulk Power System: Assessing Vulnerabilities and Planning for Resilience* (Feb 2018), *http://columbiaclimatelaw.com/files/2018/02/Gundlach-Webb-2018-02-CC-Bulk-Power-System.pdf.*

[43] ConEd, *Climate Change Vulnerability Study* 4 (Dec. 2019), *https://www.coned.com/-/media/files/coned/documents/our-energy-future/our-energy-projects/climate-change-resiliency-plan/climate-change-vulnerability-study.pdf.*

[44] National Grid and Dominion Energy Virginia, for example, have focused specifically on substation flooding risk resulting from sea level rise and severe storms because of the relatively higher impact of substation loss compared to other assets like individual distribution lines. DOE Office of Energy Policy and Systems Analysis, *A Review of Climate Change Vulnerability Assessment: Current Practices and Lessons Learned from DOE's Partnership for Energy Sector Climate Resilience* 8 (May 2016), *https://toolkit.climate.gov/sites/default/files/A%20Review%20of%20Climate%20Change%20Vulnerability%20Assessments%20Current%20Practices%20and%20Lessons%20Learned%20from%20DOEs%20Partnership%20for%20Energy%20Sector%20Climate%20Resilience.pdf* (DOE Vulnerability Assessment Review).

[45] PG&E, *Climate Change Vulnerability Assessment and Resilience Strategies* 18 (Nov. 2016), *https://www.pgecurrents.com/wp-content/uploads/2016/12/PGE_climate_resilience_report.pdf.*

[46] Entergy, *Building a Resilient Gulf Coast: Executive Report* (2010), *https://www.entergy.com/userfiles/content/our_community/environment/GulfCoastAdaptation/Building_a_Resilient_Gulf_Coast.pdf.*

[47] DOE Guide at 8–15.

vulnerability assessment in order to incorporate equity concerns and examine the extent to which underserved and vulnerable groups are disproportionately impacted by these risks.[48]

2. Proposal

28. As a threshold matter, we propose that each transmission provider state whether it conducts extreme weather vulnerability analyses. Further, we propose to require each transmission provider to provide the following information on the policies and processes they employ, or plan to employ, for determining the scope of extreme weather vulnerability assessments:

(Q1) A description of the types of extreme weather events for which the transmission provider conducts, or plans to conduct, extreme weather vulnerability assessments, if any. For transmission providers that conduct, or plan to conduct, such assessments, a description of how the transmission provider determined which extreme weather hazards to include in the assessment (*e.g.,* extreme storms such as hurricanes and the associated flooding and high winds, wildfires, extreme prolonged heat or cold, or drought conditions);

(Q2) A description of how the transmission provider selects, or plans to select, the set of assets and operations that will be examined;

(Q3) A description of how the transmission provider determines, or plans to determine, the geographic or regional scope of the analysis;

(Q4) A description of whether and to what extent the transmission provider considers, or plans to consider, external interdependencies, such as interconnected utilities, other critical infrastructure sectors (*e.g.,* water, telecommunications) and supply chain-related vulnerabilities, in the assessment;

(Q5) A description of whether and to what extent the transmission provider coordinates, or plans to coordinate, with neighboring utilities and/or entities in other sectors that could potentially be relevant to the assessment;

(Q6) A description of whether and to what extent the transmission provider engages, or plans to engage, with stakeholders in the scoping phase of the assessment, including the processes used to identify and engage relevant stakeholder groups and incorporate stakeholder feedback into the extreme weather vulnerability assessment, especially with regard to disadvantaged or vulnerable communities.

B. Inputs

1. Background

29. As noted above, the processes for conducting extreme weather vulnerability assessments may vary; however, there are several types of key inputs that are likely to be part of such assessments. First, most assessments require meteorological data that support and describe how the extreme weather hazards selected for study during the scoping phase may specifically manifest in the study region (*e.g.,* local storm surge projections for the next 50 years, historical drought data, projected temperature data). In some cases, such data may be readily available, or in cases where existing extreme weather projections are inadequate to support a transmission provider's vulnerability assessment, new projections may be generated by consulting a modeling group (typically academic institutions or consulting firms).

30. Second, transmission providers can elect to use scenario analyses to explore how the set of potentially vulnerable assets and operations may vary across a range of assumed extreme weather hazards and other modeling inputs. Transmission providers may opt to study a single scenario or multiple scenarios based on previous modeling efforts; for example, in its internal climate vulnerability assessment, San Diego Gas & Electric Company (SDG&E) compiled multiple projections for temperature, rainfall patterns, drought, and sea level rise in its service territory to explore potential impacts in 2050 and 2100.[49] Alternatively, transmission providers may take a probabilistic approach whereby probability distributions are developed and forecast for each parameter (*e.g.,* precipitation, windspeed). This approach is more computationally advanced but can help produce granular, quantitative risk assessments that capture a wider range of potential variation and outcomes.

31. Third, the relevant attributes of the assets and operations that will be studied are additional key inputs into an extreme weather vulnerability assessment that may affect whether, and to what extent, these assets and operations exhibit vulnerabilities under the conditions being studied. For example, the potential vulnerability of a transmission tower to extreme wind may vary based on its height, age, and other known or foreseeable parameters. Example asset attributes could include, among others, age, design lifetime, location, elevation, and replacement costs, while example operations attributes could include type and number of staff, locations of critical staff and facilities, and maintenance schedules.

32. Fourth, transmission providers have the flexibility to decide the timeframe(s) to be considered by the vulnerability assessment (*e.g.,* the next 10 years, or a sampling of specific one-year periods).[50] The selected timeframe(s) may affect or be affected by the transmission provider's choices with other study inputs (*e.g.,* relevant datasets may not be available for a study of potential vulnerabilities 100 years into the future).

33. Lastly, if transmission providers analyze the potential financial implications of extreme weather impacts, they could use a discount rate that will convert the costs of potential impacts on identified vulnerable assets and operations at different points in time into equivalent values in a base year (*i.e.,* present dollars).[51] Discount rates could also inform transmission provider efforts to compare the costs of extreme weather events to the benefits of mitigation actions over time.

2. Proposal

34. We propose to direct each transmission provider to provide the following information about the inputs it uses, or plans to use, for any extreme weather vulnerability assessments.

(Q9) A description of methods and processes the transmission provider uses, or plans to use, to determine the meteorological data needed for its assessment. In particular, how the transmission provider determines whether it can rely on existing extreme weather projections, and if so, whether such projections are adequately robust;

(Q10) A description of how the transmission provider determines whether to use scenario analysis, and if so, whether to do so with multiple scenarios;

(Q11) The extent to which it reviews neighboring transmission providers' extreme weather vulnerability assessments, if available, to evaluate the consistency of extreme weather

[48] Oregon Department of Energy, *2020 Biennial Energy Report* 28 (Nov. 2020), *https://www.oregon.gov/energy/Data-and-Reports/Documents/2020-Biennial-Energy-Report.pdf.*

[49] DOE Vulnerability Assessment Review at 14.

[50] For example, in their internal climate vulnerability assessments, Entergy studied the following 45 years while Seattle City Light studied years 2030 and 2050. *Id.* at 6.

[51] William Pizer and Richard Newell, *Discounting the Benefits of Climate Change Mitigation: How Much Do Uncertain Rates Increase Valuations?* 2 (Dec. 2001), *https://www.c2es.org/wp-content/uploads/2001/12/econ_discounting.pdf.*

projections between transmission providers;

(Q12) The timeframe(s) and discount rate(s) selected for the extreme weather vulnerability assessment;

(Q13) A description of the methods and processes the transmission provider uses, or plans to use, to create an inventory of potentially vulnerable assets and operations.

C. Vulnerabilities and Exposure to Extreme Weather Hazards

1. Background

35. Extreme weather vulnerability assessments can include an analysis of the assets or operations exposed to the types of extreme weather hazards established in the assessment's scope (*e.g.,* hurricanes and associated flooding, and high winds, wildfires, extreme prolonged heat or cold, drought conditions), the sensitivities of transmission assets and operations to extreme weather events, and the magnitude of any impacts to the transmission system caused by extreme weather events. In assessing the exposure to extreme weather events, transmission providers may estimate the likelihood and extent of damage or disruption to their transmission assets and operations if various extreme weather events occur.

36. In extreme weather vulnerability assessments, transmission providers generally use probability distributions or other quantitative estimates to examine how a particular asset or operation would be affected under a specific extreme weather event or combination of events.[52] The sensitivity of an asset or operation to a specific extreme weather event depends on both the type and severity of the event (*e.g.,* the force of a wave during a hurricane or temperature during a heat wave) and the type, configuration, or attributes of the asset or operation itself (*e.g.,* the physical resilience of a transmission tower to increased wind speeds or wave force).[53] In cases where it is difficult to estimate the likelihood or severity of damage or disruption given the occurrence of an extreme weather impact, transmission providers may provide a best estimate.

37. Rather than attempting to analyze the likelihood of damage, disruption or failure for all transmission assets and operations, transmission providers may instead use a screening analysis to identify critical thresholds at which extreme weather hazard(s) would likely render an asset or operation vulnerable based on the relevant attributes determined in the sensitivity analysis. If a screening analysis identifies potential vulnerabilities among assets and operations considered especially significant or critical, transmission providers conducting vulnerability assessments could supplement their analysis with a more detailed review of the specific assets and operations.

38. Once these vulnerabilities are identified, transmission providers may estimate the magnitude of the impacts that would cause damage or disruption to assets or operations triggered by various extreme weather hazards. For example, NERC acknowledges that various conditions could lead to loss of resources, including extreme cold temperatures and wind that can cause wellhead, processing plant, or compressor station freezing or ambient temperature conditions that are outside the operating temperatures for the asset.[54]

2. Proposal

39. We propose to direct each transmission provider to provide the following information about the methods or processes it uses, or plans to use, in its extreme weather vulnerability assessment to assess the vulnerability of its transmission assets and operations to extreme weather events.

(Q14) A description of how the transmission provider identifies the transmission assets or operations vulnerable to the extreme weather events for which it conducts assessments;

(Q15) A description of how the transmission provider uses, or plans to use, screening analyses to test for potential vulnerabilities, as well as how the transmission provider examines, or plans to examine, the sensitivities of the transmission assets and operations being studied to types and magnitudes of extreme weather events.

D. Costs of Impacts

1. Background

40. The aggregate economic effects of climate change and extreme weather on energy infrastructure could be trillions of dollars over the next few decades, including the costs of power outages to utility customers and costs to rebuild from storm damage, among others.[55] These costs are a function of the estimated exposure of the impacted assets, their geographical locations, the severity of associated extreme weather impacts, other potential location-specific factors, and the study's timeframe and assumed discount rate (used for converting costs to net present value). These costs may be further broken up into direct and indirect costs.

41. In this proceeding, we define direct costs as the economic losses borne by the transmission provider. Direct costs may include expenditures and administrative and labor costs associated with responding to and resolving extreme weather impacts, such as the costs of repairing, replacing, or relocating an asset. Direct costs may also include the transmission provider's opportunity costs of lost sales during an outage.[56] Transmission providers may arrive at a rough estimate of direct costs by assuming that impacted vulnerable assets would be damaged beyond repair and calculating their associated replacement costs. Alternatively, a more detailed analysis could examine how costs vary as a function of impact severity for specific assets and operations.[57]

42. Depending on the scope of the extreme weather vulnerability assessment, transmission providers may also consider indirect costs, which we define in this proceeding as costs associated with loss of service to utility customers.[58] For example, relevant indirect costs may include equipment damage, spoilage, and health and safety effects.[59] Value of lost load calculations, which estimate the value that customers place on reliable electricity service, are a common method for quantitatively estimating indirect costs.[60]

2. Proposal

43. We propose to direct each transmission provider to provide the following information on how it estimates, or plans to estimate, the costs associated with extreme weather

[52] CPUC Guide at 15.

[53] DOE Guide at 39.

[54] NERC Post-Conference Comments at 6.

[55] GAO Report at 19; Deloitte, *The Turning Point: A New Economic Climate in the United States* 15 (Jan. 2022), a*https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-the-turning-point-a-new-economic-climate-in-the-united-states-january-2022.pdf.*

[56] DOE Guide at 43.

[57] *Id.* at 44.

[58] Relatedly, transmission providers may also consider induced costs that do not directly affect their ratepayers, such as increased prices for consumer goods and effects on interdependent sectors like water and transportation. However, we assume that induced costs would likely be beyond the scope of most transmission providers' extreme weather vulnerability assessments because they do not directly affect ratepayers or the prudence of transmission provider investments. *Id.* at 45.

[59] *Id.* at 45–46.

[60] *See, e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), 125 FERC ¶ 61,071, at P 208 (2008) (describing the Commission's contemplated reforms ''to ensure that the market price for energy accurately reflects the value of such energy during an operating reserve shortage'').

impacts in its extreme weather vulnerability assessments:

(Q16) A description of the methodology or process, if any, the transmission provider uses, or plans to use, to estimate the potential costs of extreme weather impacts on identified vulnerable assets and operations;

(Q17) If the transmission provider estimates such potential costs, a description of the types of: (a) direct costs, such as replacements or repair costs, restoration costs, associated labor costs, or opportunity costs of lost sales, and (b) indirect costs, such as costs associated with loss of service to electric customers and other utilities that purchase power from the transmission provider, including equipment damage, spoilage, and health and safety effects,[61] in calculating the costs of extreme weather impacts.

E. Risk Mitigation

1. Background

44. In general, the overall vulnerability of the transmission system is a function of the estimated exposure of vulnerable assets and operations to extreme weather threats and the estimated impact of those threats. For example, the failure of an asset that is highly exposed to a particular extreme weather risk may not materially increase the overall vulnerability of the system if there are other redundant assets that perform similar system functions. Conversely, the failure of a pivotal asset (*i.e.,* not backed by redundant assets) with relatively low exposure to a particular extreme weather risk may nonetheless pose significant operational challenges if such failure were to occur.

45. Some transmission providers consider the potential degradation or failure of key assets and operations due to various extreme weather threats by using likelihood-consequence matrices to categorize vulnerable assets and operations based on: (1) the likelihood that the asset or operation is impacted by an extreme weather event or change in climatic parameter (*e.g.,* severe storms and flooding, ambient heat increase, sea-level rise); and (2) the estimated associated consequences for overall system performance. This approach can reveal the need to replace certain assets, deficiencies in current asset and operational performance standards, or the potential for stranded assets.[62]

46. Under this approach, transmission providers may further define illustrative anchors for these categories to foster a consistent interpretation under this approach. For example, Public Service Electric & Gas Company (PSE&G) chose to map vulnerabilities onto a likelihood-consequence matrix composed of six likelihood categories—with its highest likelihood category as those events expected to occur more than once per year, and its lowest likelihood category as those which are expected to never occur—and six consequence categories ('inconsequential,' 'minimal,' 'minor,' 'moderate,' 'considerable,' and 'severe').[63] PSE&G then assigned numeric ratings to each likelihood and consequence category and scored each extreme weather vulnerability by multiplying the two ratings together. This approach enabled PSE&G to rank the severity of extreme weather and climate risks to its assets and further prioritize actions to mitigate these risks.[64]

47. After assessing the relative risks to assets and operations, the transmission provider can then determine appropriate mitigation. Example solutions for mitigating risks to vulnerable assets may include hardening or relocating, while example solutions for mitigating risks to vulnerable operations may include improved load management practices that reduce outages and expedite restoration.

2. Proposal

48. We propose to direct each transmission provider to provide the following information on the processes and policies it uses, or plans to use, to determine and implement appropriate measures for mitigating extreme weather risks identified in its extreme weather vulnerability assessment:

(Q18) A description of how the transmission provider uses, or plans to use, the results of its assessment to develop measures to mitigate extreme weather risks, including:

i. How the transmission provider determines which risks should be mitigated and the appropriate time horizon for mitigation;

ii. How the transmission provider determines appropriate extreme weather risk mitigation measures, including any analyses used to determine the lowest-cost or most impactful portfolio of measures;

(Q19) A description of how the transmission provider informs, or plans to inform, relevant stakeholders—such as neighboring transmission providers, RTOs/ISOs of which the transmission provider is a member, electric customers, affected and frontline communities, shareholders and investors, emergency management agencies, local and state administrations, and state utility regulators—of identified extreme weather risks and selected mitigation measures;

(Q20) A description of the extent to which the transmission provider incorporates, or plans to incorporate, identified extreme weather risks and mitigation measures into local and regional transmission planning processes;

(Q21) A description of how the transmission provider measures, or plans to measure, the progress and success of extreme weather risk mitigation measures (*e.g.,* through reduced outages) and how it incorporates these observations into ongoing and future extreme risk mitigation actions.

IV. Information Collection Statement

49. The information collection requirements contained in this NOPR are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[65] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[66] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

[61] DOE Guide at 43–46.

[62] CPUC Guide at 15–16.

[63] DOE Vulnerability Assessment Review at 16–17.

[64] *Id.*

[65] 44 U.S.C. 3507(d).

[66] 5 CFR 1320.11 (2021).

50. This NOPR would, pursuant to § 304 of the FPA, require transmission providers [67] to file one-time reports on their extreme weather vulnerability assessment practices. The Commission believes requiring transmission providers to submit a one-time informational report on their current or planned efforts to assess the vulnerabilities of their jurisdictional transmission assets and operations to extreme weather events will assist in the proper administration of the FPA.

Title: One-Time Informational Reports on Extreme Weather Vulnerability Assessments.

Action: Proposed FERC–1004 collection of information in accordance with Docket Nos. RM22–16–000 and AD21–13–000.

OMB Control No.: 1902–TBD.

Respondents: Transmission providers (including public utility transmission owners that are members of RTOs/ISOs and the RTOs/ISOs themselves).

Frequency of Information Collection: One time.

Necessity of Information: The Commission seeks to address the increasing risks of extreme weather to bulk electric system reliability and jurisdictional rates, and to better understand how transmission providers assess and mitigate those risks. The Commission believes the informational reports directed by this Proposed Rulemaking will allow it to determine whether additional action on extreme weather vulnerability assessments is needed and assist the Commission in the proper administration of the FPA.

Internal Review: The Commission has reviewed the reporting requirement and has determined that such a requirement is necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

51. The Commission solicits comments on its need for this information; whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected or retained; and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

52. Please send comments concerning the collection of information and the associated burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify FERC–1004 and OMB Control Number 1902–TBD in the subject line of your comments. Comments should be sent within 60 days of publication of this notice in the **Federal Register**.

53. Please submit a copy of your comments on the information collection to the Commission via the eFiling link on the Commission's website at *http://www.ferc.gov.* Comments on the information collection that are sent to FERC should refer to Docket Nos. RM22–16–000 and AD21–13–000.

54. *Public Reporting Burden:* Our estimates are based on the NERC Compliance Registry as of May 6, 2022 and each RTO/ISO's list of participating transmission owners per their websites, which indicates that there are 49 transmission providers [68] (including the six RTOs/ISOs) and 83 transmission owners that are registered with NERC within the United States and are subject to this proposed rulemaking.[69]

55. The Commission estimates that the burden [70] and cost of the proposed FERC–1004 are as follows:

FERC–1004, AS PROPOSED IN NOPR IN DOCKET NOS. RM22–16–000 AND AD21–13

A. Area of modification	B. Annual number of respondents	C. Annual estimated number of responses (1 per respondent)	D. Average burden hours & cost [71] per response	E. Total estimated burden hours & total estimated cost (Column C × Column D)
Report on Extreme Weather Vulnerability Assessment (one-time).	132 (49 TPs [72] and 83 TOs).	132	Year 1: 99 hours; $8,613.00 ..... Subsequent Years: 0 hours per year; $0..	Year 1: 13,068 hours; $1,136,916 Subsequent Years: 0 hours per year; $0.

V. Environmental Analysis

56. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[73] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[74] Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

[67] As noted above, in this NOPR, unless otherwise noted, we use the term ''transmission provider'' to mean any public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce. See 16 U.S.C. 824(e); 18 CFR 35.28. To be clear, this term encompasses public utility transmission owners that are members of RTOs/ISOs. Accordingly, the reports we are proposing herein would be filed by the public utility members of RTOs/ISOs, as well as by the RTOs/ISOs themselves and other public utility transmission providers.

[68] The transmission service provider (TSP) function is a NERC registration function which is similar to the transmission provider that is referenced in the pro forma Open Access Transmission Tariff. The TSP function is being used as a proxy to estimate the number of transmission providers that are impacted by this proposed rulemaking.

[69] The number of entities listed from the NERC Compliance Registry reflects the omission of the Texas RE registered entities.

[70] ''Burden'' is 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.

[71] Commission staff estimates that respondents' hourly wages plus benefits are comparable to those of FERC employees. Therefore, the hourly cost used in this analysis is $87.00 (or $180,703 per year).

[72] The number of entities listed from the NERC Compliance Registry reflects the omission of the Texas RE registered entities.

[73] *Reguls. Implementing the Nat'l Env'tal Pol'y Act,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[74] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

VI. Regulatory Flexibility Act

57. The Regulatory Flexibility Act of 1980 (RFA) [75] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[76] The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[77] transmission providers (including RTOs/ISOs) and transmission owners fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121),[78] with a size threshold of 500 employees (including the entity and its associates).[79]

58. We estimate that there are 132 total transmission providers and owners that (not including the six RTOs/ISOs) are affected by the NOPR.

59. The six RTOs/ISOs (SPP, MISO, PJM, ISO–NE, NYISO, and CAISO) each employ more than 500 employees and are not considered small entities.

60. Using the list of transmission service providers from the NERC Registry (dated May 6, 2022), we estimate that approximately 30% of those entities are small entities. We estimate an additional average one-time cost of $8,613.00 for each of the 132 entities affected by the NOPR.

61. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [80] We do not consider the estimated cost to be a significant economic impact. As a result, pursuant to section 605(b) of the RFA,[81] the Commission certifies that the proposals in this NOPR will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

62. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 30, 2022. Comments must refer to Docket Nos. RM22–16–000 and AD21–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

63. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

64. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VIII. Document Availability

65. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

66. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

67. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission. Commissioner Danly is concurring with a separate statement attached.

Issued: June 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

United States of America

Federal Energy Regulatory Commission

One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, and Electric System Reliability

Docket Nos. RM22–16–000, AD21–13–000

(Issued June 16, 2022)

DANLY, Commissioner, *concurring:*

1. I concur in today's notice of proposed rulemaking directing transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting weather assessments to identify where and under what conditions jurisdictional transmission assets and operations are at risk from weather-related events, how those risks manifest, and their consequences for transmission system operations.[1]

2. It will take over six months, at a minimum, from this NOPR to the filing of the informational reports. These informational reports will be filed long after this summer is over and will not, and indeed cannot, timely address the projected risk of widespread blackouts this summer.[2] It is doubtful they will be

[75] 5 U.S.C. 601–612.

[76] *Id.* 603(c).

[77] 13 CFR 121.201.

[78] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, *https://www.census.gov/eos/www/naics/.*

[79] The threshold for the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small. 13 CFR 121.201.

[80] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act* 18 (August 2017), *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

[81] 16 U.S.C. 605(b).

[1] *One-Time Informational Reports on Extreme Weather Vulnerability Assessments,* 179 FERC ¶ 61,196 (2022) (NOPR).

[2] Chairman Glick says that I am ''prone to hyperbole'' when I warn that blackouts are the likely outcome of the majority's misguided policies to prop up renewables at the expense of competitive markets and existing fossil resources. Rich Heidorn Jr., *Summer Forecasts Spark Warnings of 'Reliability Crisis' at FERC,* RTO Insider (May 19, 2022), *https://www.rtoinsider.com/articles/30170-summer-forecasts-spark-warnings-reliability-crisis-ferc.* Chairman Glick appears to be confusing ''hyperbole'' with ''reality.'' California and Texas

filed in time to take action, if gaps are identified, for the winter of 2022–2023 either. Nonetheless, I agree that there is some value in understanding the extent to which, *if any,*[3] transmission providers currently assess and mitigate the risks posed by weather-related events. I also agree that the informational reports may help us identify opportunities to avoid adverse rate impacts stemming from weather events, which is consistent with our obligations under the Federal Power Act.[4]

3. The NOPR makes use of, indeed bases our action upon, an ever-growing narrative: reliability challenges arise primarily from weather-related events.[5] But even if one were to grant that certain parts of the United States were experiencing statistically unusual weather when compared to historical baselines, that has *absolutely nothing* to do with whether the markets and regulated utilities are procuring sufficient generation of the correct type to ensure resource adequacy and system reliability. We cannot blame our problems on the weather. The problem is federal and state policies which, by mandate or subsidy, spur the development of *weather dependent* generation resources at the expense of the dispatchable resources needed for system stability and resource adequacy. This is seen in particularly stark terms in our markets in which subsidies, combined with failed market design, warp price signals. This destroys the incentives required to ensure the orderly entry, exit, and retention of the necessary quantities of the necessary types of generation. The thinner and thinner margins that result render the Bulk-Power System more and more susceptible to the caprices of weather. We have been warned by credible sources on the matter: NERC,[6] the RTOs,[7] and Commission staff.[8]

4. As more nuclear[9] and coal plants[10]—with their high capacity factors and onsite fuel—announce early retirements, the dispatchable resources that remain are predominantly natural gas generators. Backstopping weather-dependent resources with gas generators, largely dependent on just-in-time delivery of gas, raises its own set of reliability concerns, particularly in areas—like New England—with inadequate pipeline infrastructure. On top of this, the Commission has delayed the processing of pipeline certificates and cast a chill over the pipeline industry with its ''draft policy statements'' [11] and orders throwing the finality of fully litigated certificates into doubt.[12] Under pressure to reduce emissions at all costs, pipelines have moved to electrify compressor stations, furthering an unhealthy co-dependency between the gas and electric systems. And the efforts of politically motivated financial institutions to cut fossil fuel producers' access to capital has added to the current supply crunch.[13] Yet, we are led to believe that extreme weather is supposed to be the culprit for the nation's looming reliability woes. Not so.

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have already experienced blackouts. Over two-thirds of the nation faces ''elevated [reliability] risk'' this summer. Ethan Howland, *FERC commissioners respond to elevated power outage risks across two-thirds of US,* Utility Dive (May 20, 2022), *https://www.utilitydive.com/news/ferc-nerc-power-outage-risks-summer-drought/624111/* (''At its monthly meeting Thursday, Federal Energy Regulatory Commission members dissected the North American Electric Reliability Corp.'s warning that roughly two-thirds of the United States faces [sic] heightened risks of power outages this summer.'').

[3] The NOPR is clear that we do not intend in this NOPR to require transmission providers to conduct extreme weather vulnerability assessments where they do not do so already, or to require transmission providers to change how they conduct or plan to do such assessments. *See* NOPR, 179 FERC ¶ 61,196 at P 22; *id.* P 22 n.40 (''Similarly, while we propose that transmission providers may describe what they 'plan' to do with respect to various issues, this is meant only to capture plans that have been made, but not yet been implemented; transmission providers are not required to speculate on how they would conduct extreme weather vulnerability analysis where they have no plans to do so.'').

[4] *See* 16 U.S.C. 824d, 824e.

[5] *See* Chairman Glick (@RichGlickFERC), Twitter (May 19, 2022, 11:13 a.m.), *https://twitter.com/RichGlickFERC/status/1527306459263881223?s=20&t=3a4C-1cac3nmFkjZyvoUDA* (''Extreme weather may be the single most important factor impacting #grid #reliability & the impacts of expected heat, drought, wildfires, hurricanes, & other events—all pose a big threat. Keeping eye on West, ERCOT, & parts of MISO this summer.''); Benjamin Mullin, *Climate Change is Straining California's Energy System, Officials Say,* N.Y. Times (May 6, 2022), *https://www.nytimes.com/2022/05/06/business/energy-environment/california-electricity-shortage.html.*

[6] *See generally* North American Electric Reliability Corp., *2022 Summer Reliability Assessment* (May 2022), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.* In addition, NERC has warned that system operators in areas of significant amounts of solar photovoltaic (PV) resources should be aware of the potential for resource loss events during grid disturbances. *Id.* at 6. NERC has further warned that ''[i]ndustry experience with unexpected tripping of [Bulk-Power System]-connected solar PV generation units can be traced back to the 2016 Blue Cut fire in California, and similar events have occurred as recently as Summer 2021. A common thread with these events is the lack of inverter-based resource (IBR) ride-through capability causing a minor system disturbance to become a major disturbance. The latest disturbance report reinforces that improvements to NERC Reliability Standards are needed to address systemic issues with IBRs.'' *Id.* NERC also explains that ''because the electrical output of variable energy resources (*e.g.,* wind, solar) depends on weather conditions, on-peak capacity contributions are less than nameplate capacity.'' *Id.* at 45.

[7] *See, e.g.,* California Independent System Operator Corp., *2022 Summer Loads and Resources Assessment* (May 18, 2022), *http://www.caiso.com/Documents/2022-Summer-Loads-and-Resources-Assessment.pdf;* Midcontinent Independent System Operator (MISO), *Lack of Firm generation may necessitate increased reliance on imports and use of emergency procedures to maintain reliability* (Apr. 28, 2022), *https://www.misoenergy.org/about/media-center/miso-projects-risk-of-insufficient-firm-generation-resources-to-cover-peak-load-in-summer-months/;* PJM Interconnection, L.L.C. (PJM), *Energy Transition in PJM: Frameworks for Analysis* (Dec. 15, 2021), *https://pjm.com/-/media/committees-groups/committees/mrc/2021/20211215/20211215-item-09-energy-transition-in-pjm-whitepaper.ashx* (addressing renewable integration).

[8] *See FERC Staff Presentation on 2022 Summer Energy Market and Reliability Assessment* (AD06–3–000), FERC, at slide 9 (May 19, 2022), *https://www.ferc.gov/news-events/news/presentation-report-2022-summer-energy-market-and-reliability-assessment* (identifying the Western U.S., Texas, MISO and Southwest Power Pool as ''[p]arts of North America are at **elevated** or **high** risk of energy shortfalls during peak summer conditions'') (emphasis in original); *id.* at slide 10 (In MISO, ''[g]eneration capacity declined 2.3% since 2021 resulting in [a] lower reserve margin'' and the ''[n]orth and central areas [are] at risk of reserve shortfall in extreme temperatures, high generation outages, or low wind'' with ''[s]ome risk of insufficient operating reserves at normal peak demand.'').

[9] U.S. Energy Information Administration, *U.S. nuclear electricity generation continues to decline as more reactors retire* (Apr. 8, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=51978.*

[10] Ethan Howland, *Coal plant owners seek to shut 3.2 GW in PJM in face of economic, regulatory and market pressures,* Utility Dive (Mar. 22, 2022), *https://www.utilitydive.com/news/coal-plant-owners-seek-to-retire-power-in-pjm/620781/.*

[11] *See Certification of New Interstate Nat. Gas Facilities,* 178 FERC ¶ 61,107 (2022) (Danly and Christie, Comm'rs, dissenting); *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.,* 178 FERC ¶ 61,108 (2022) (Danly and Christie, Comm'rs, dissenting); *see also Certification of New Interstate Nat. Gas Facilities,* 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements to ''draft policy statements''). It is worth noting that PJM and MISO filed comments on the draft policy statements. PJM and MISO May 25, 2022 Limited Reply Comments, Docket Nos. PL18–1–001 and PL21–3–001, at 4 (''[A]ny future Commission pipeline policy should consider the importance of ensuring that needed pipeline infrastructure can be timely sited, and ensure that the need for infrastructure to meet electric system reliability is affirmatively considered and not lost in the debate over the scope of environmental reviews to be undertaken by the Commission.'').

[12] *See, e.g., Algonquin Gas Transmission, LLC,* 174 FERC ¶ 61,126 (2021) (Danly and Christie, Comm'rs, dissenting).

[13] Matt Egan, *Energy crisis will set off social unrest, private-equity billionaire warns,* CNN Business (Oct. 26, 2021), *https://edition.cnn.com/2021/10/26/business/gas-prices-energy-crisis-schwarzman/index.html* (''Part of the problem, [Blackstone CEO Stephen Schwarzman] said, is that it's getting harder and harder for fossil fuel companies to borrow money to fund their expensive production activities, especially in the United States. And without new production, supply won't keep up.'').

5. The question of whether the weather is getting worse is a red herring. The much more relevant question is whether current system operations and tariff and market design are adequate to maintain reliability. The present high risk of reliability failures proves that they are not. That the policies of the Commission and other government bodies are undermining reliability is far more obvious than the question of whether, and how, the weather is getting worse and what specific effects that worsening weather might have on the stability of the electric system. That question of the weather's effect on reliability is a subject that doubtless merits study and planning, but misguided government policies are the root cause of the alarming reliability issues facing the nation, not the weather.

For these reasons, I respectfully concur.

James P. Danly,
Commissioner.

[FR Doc. 2022–13469 Filed 6–30–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 362

[Docket No. 220629–0144]

RIN 0625–AB21

Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: On June 6, 2022, the President signed Presidential Proclamation 10414 (Proclamation). The Proclamation declares an emergency to exist and states that immediate action is needed to ensure access to a sufficient supply of solar cells and modules to assist in meeting the United States' electricity generation needs. Accordingly, the Proclamation authorizes the Secretary of Commerce (Secretary) to exercise authority under section 318(a) of the Tariff Act of 1930, as amended (the Act), to extend during the course of such emergency the time to perform any act. The Proclamation also authorizes the Secretary to allow the importation of certain solar cells and modules from certain Southeast Asian countries free of the collection of duties and estimated duties under the antidumping and countervailing duty laws until 24 months after the date of the Proclamation, or until the emergency is declared terminated, whichever occurs first. In accordance with the Proclamation and the authority granted to the Department of Commerce (Commerce), Commerce is issuing a proposed rule to postpone and waive the application of certain regulations, if otherwise applicable, to solar cells and modules, exported from the identified Southeast Asian countries, that are subject to certain circumvention inquiries currently before Commerce. This proposed rule would provide that, in the event of an affirmative preliminary or final determination in the circumvention inquiries, Commerce would not instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of these cells and modules, collect cash deposits on those entries, or apply antidumping or countervailing duties to those entries, so long as the entries of the cells or modules were entered, or withdrawn from warehouse, for consumption before June 6, 2024 or before the date the emergency has terminated, whichever occurs first (in either case, the Date of Termination).

DATES: Written comments must be received by August 1, 2022.

ADDRESSES: Submit comments through the Federal eRulemaking Portal at *http://www.Regulations.gov,* Docket No. ITA–2022–0006. Comments may also be submitted by mail or hand delivery/courier, addressed to Lisa W. Wang, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

Commerce will consider all comments received before the close of the comment period. All comments responding to this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov.* Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance (E&C) Communications office at (202) 482–0063 or *ECCOMMS@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Dana Moreland, Enforcement & Compliance (E&C) Communications office at (202) 482–0063 or *ECCOMMS@trade.gov.*

SUPPLEMENTARY INFORMATION:

Presidential Proclamation 10414

On June 6, 2022, President Joseph R. Biden signed Proclamation 10414, ''Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia'' (87 FR 35067) (the Proclamation). As part of the Proclamation, the President declared an emergency to exist for purposes of section 318(a) of the Act (19 U.S.C. 1318(a)) and made that section's authority available to the Secretary according to the section's terms. The Proclamation directs the Secretary to ''consider taking appropriate action under section 1318(a) of title 19, United States Code, to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as the Secretary may prescribe, the importation, free of the collection of duties and estimated duties, if applicable, under sections'' 701, 731, 751 and 781 of the Act (19 U.S.C. 1671, 1673, 1675, 1677j) with respect to certain solar cells and modules exported from the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam), and that are not already subject to an antidumping or countervailing duty order as of the date of the Proclamation. Further, the Proclamation directs the Secretary to consider taking action to ''temporarily extend during the course of the emergency the time therein prescribed for the performance of any act related to such imports.'' [1]

As the Proclamation states, electricity is an essential part of modern life that powers homes, business, and industry. It is critical to the function of hospitals, schools, public transportation, and the

[1] Section 318(a) of the Act (19 U.S.C. 1318(a)) gives the Secretary of the Treasury authority, on a temporary basis, to take certain actions to respond immediately where the President declares the existence of an emergency. This authority, insofar as it encompasses antidumping and countervailing duties, was delegated to the Secretary of Commerce in 1979, to be exercised in consultation with the Secretary of Treasury. Section 5(a)(1)(e) of the Reorg. Plan No. 3 of 1979. Consistent with the Reorganization Plan, we have consulted with the Department of Treasury. Consistent with the Proclamation, we have consulted with the Department of Homeland Security.

defense industrial base. It is key to the country's infrastructure, as well as to national security and defense. A robust and reliable electric power system is therefore a basic human necessity—vital to the function and sustainability of major sectors of the economy.

Currently, the United States is faced with threats to its ability to generate sufficient electricity, including energy market disruptions caused by Russia's invasion of Ukraine and extreme weather events exacerbated by climate change. For example, in parts of the country, drought conditions coupled with heatwaves are simultaneously causing projected electricity supply shortfalls and record electricity demand. Utilities and grid operators must engage in planning at this time to build adequate capacity to address expected demand, including in the face of these threats and others.

Solar energy is among the fastest-growing sources of new electric generation in the United States and is increasingly relied upon by utilities and grid operators to ensure sufficient resources and maintain reliable service. In fact, additions of solar capacity and batteries were expected to account for over half of new electric sector capacity in 2022 and 2023.

The Proclamation states that ''[i]n recent years, the vast majority of solar modules installed in the United States were imported, with those from Southeast Asia making up approximately three-quarters of imported modules in 2020.'' Against this backdrop, the Proclamation states that U.S. entities have been unable to import solar modules recently in sufficient quantities to achieve energy goals. Across the country, solar projects are being postponed or canceled, and an insufficient supply of solar modules jeopardizes planned capacity additions, which in turn threatens the availability of sufficient electricity generation to meet customer demands.

Moreover, electricity produced using solar energy is critical to reducing the United States' dependence on electricity generated through burning fossil fuels, which drives climate change, a recognized threat to the United States' national security. If U.S. entities cannot import sufficient quantities of solar materials for the foreseeable future, the United States will be unable to ensure sufficient electricity grid resources and meet climate and clean energy goals.

In light of these concerns, the Proclamation seeks to ensure that the United States has access to a sufficient supply of certain solar cells and modules to help meet the nation's electricity needs while efforts to expand domestic solar manufacturing capacity continue.

This proposed rule is intended to provide relief from the emergency declared in, and in accordance with, the Proclamation.

Existing Procedures for Suspension of Liquidation and Cash Deposits in Circumvention Inquiries

Commerce's regulations governing circumvention inquiries can be found at 19 CFR 351.226. Section 351.226(l)(1) provides that, when Commerce publishes a notice of initiation of a circumvention inquiry, Commerce will notify CBP of the initiation and will direct CBP to continue to suspend liquidation of entries of products subject to the circumvention inquiry that were already subject to suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order (*i.e.,* estimated duties). Section 351.226(l)(2) provides that, if Commerce conducts the circumvention inquiry and subsequently issues an affirmative preliminary circumvention determination, Commerce will direct CBP to (i) continue suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate; (ii) begin the suspension of liquidation of unliquidated entries not yet suspended that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry, and require the collection of cash deposits of estimated duties for those entries; and (iii) potentially apply its affirmative determination to unliquidated entries entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry based on certain allegations and information. Section 351.226(l)(3) provides similar directions if Commerce subsequently issues an affirmative final circumvention determination.

New Procedures in Accord With Presidential Proclamation 10414

Commerce is currently conducting circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules, which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in the People's Republic of China (China) and exported to the United States, are circumventing the antidumping and countervailing duty orders on solar cells and modules from China.[2] To respond to the emergency declared in the Proclamation, and pursuant to the Proclamation and section 318(a) of the Act, in this proposed rule, Commerce would add Part 362 to extend the time for, and waive, the actions provided for in 19 CFR 351.226(l)(1), (2), and (3), if applicable, in the ongoing circumvention inquiries covering SA-Completed Cells and Modules[3] that are not already subject to an antidumping or countervailing duty order as of June 6, 2022 (the date the Proclamation was signed). Furthermore, this proposed rule provides that, in the event of an affirmative final determination of circumvention, no resulting antidumping or countervailing duties would be applied to SA-Completed Cells and Modules before the Date of Termination.

As explained above, this proposed rule would apply only to SA-Completed Cells and Modules. This proposed rule would not apply to solar cells and modules that are manufactured and exported from China and are subject to

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders,* 87 FR 19071 (April 1, 2022) (*Circumvention Inquiries Initiation*).

[3] Southeast Asian-Completed Cells and Modules (SA-Completed Cells and Modules) are the products subject to certain circumvention inquiries currently before Commerce. *See Circumvention Inquiries Initiation,* 87 FR at 19071. Specifically, SA-Completed Cells and Modules are crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using certain parts and components from China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. In addition to SA-Completed Cells and Modules, there may be other cells and modules using Chinese solar cells completed in and exported from those four countries and already subject to certain antidumping and countervailing duty orders covering Chinese merchandise because, for purposes of those orders, they are considered to be of Chinese origin. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (collectively, Chinese Solar Orders). There likewise may be cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using Taiwanese solar cells that are already subject to a certain antidumping duty order covering Taiwanese merchandise because, for purpose of that order, they are considered to be of Taiwanese origin. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order,* 80 FR 8596 (February 18, 2015) (this Taiwan solar order, along with the Chinese Solar Orders are herein collectively referred to as, Certain Solar Orders). Such cells and modules are not considered SA-Completed Cells and Modules for purposes of this proposed rule.

the existing antidumping or countervailing duty orders on solar cells and modules from China (A–570–979; C–570–980). Nor would it apply to solar cells and modules that are exported from Cambodia, Malaysia, Thailand, and Vietnam that are already subject to the Chinese Solar Orders.[4] In addition, this proposed rule would not apply to certain solar products that are manufactured and exported from Taiwan and are subject to the existing antidumping duty order on solar products from Taiwan (A–583–853), as well as certain solar products that are exported from Cambodia, Malaysia, Thailand, and Vietnam but are (already) subject to the order covering Taiwanese merchandise (*i.e.,* the country of origin is considered Taiwan).

Commerce would continue to use the certification requirements in place as an enforcement tool to monitor imports of solar cells and modules that are either Chinese or Taiwanese in origin and covered by the current antidumping and countervailing duty orders. Consistent with the Proclamation, the extension and waiver described in this proposed rule would apply only to entries of SA-Completed Cells and Modules that were entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination.

Under this proposed rule, the following would apply:

(1) Where, in connection with initiation of the circumvention inquiries, pursuant to § 351.226(l)(1), Commerce has already directed CBP to continue suspension of liquidation of entries that were already subject to suspension and to collect cash deposits, Commerce would issue instructions to CBP to discontinue the suspension of liquidation and collection of cash deposits of estimated antidumping and countervailing duties for those entries on the basis of the circumvention inquiries. If, at the time Commerce issues instructions to CBP, the entries are suspended only for purposes of the circumvention inquiries, Commerce would direct CBP to liquidate those entries without regard to antidumping and countervailing duties and refund those cash deposits collected pursuant to the circumvention inquiries.

(2) If, before the Date of Termination, Commerce issues an affirmative preliminary determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce would not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated antidumping and countervailing duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry, notwithstanding § 351.226(l)(2).

(3) If, before the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce would not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated antidumping and countervailing duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry and before the Date of Termination, notwithstanding § 351.226(l)(3).

(4) If, before or after the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules:

a. Commerce would direct CBP to liquidate without regard to antidumping or countervailing duties entries of those SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption before the Date of Termination if liquidation instructions were issued to CBP pursuant to a different segment of the proceeding in accordance with section 751 of the Act.

b. Commerce would direct CBP to commence suspension of liquidation of the SA-Completed Cells and Modules, as applicable, and collect cash deposits of estimated antidumping and countervailing duties at the applicable rate only on SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption, on or after the Date of Termination.

Consistent with the authority granted by the Proclamation, Commerce notes that these proposed actions would ensure that duties or estimated duties would not be collected on entries of SA-Completed Cells and Modules that entered the United States both before and after the signing of the Proclamation, so long as they enter, or are withdrawn from warehouse, for consumption, before the Date of Termination. This treatment of pre-Proclamation entries is merited because the President has determined that an emergency exists that affects both current and potential future energy projects dependent on solar module imports. Consistent with the purpose of the Proclamation, entities that use SA-Completed Cells and Modules should not be financially restricted from investing in near-term or future solar capacity additions because they had to pay cash deposits on merchandise that entered the United States just a few months, or even days, before the signing of the Proclamation. Indeed, there may be ongoing projects that would use some modules imported before the Proclamation's signing and other modules imported afterwards. It would create market confusion and dissuade investment in future solar projects if this proposed rule were to treat such entries differently. An intent of the Proclamation is to help increase the supply of United States solar energy for electricity generation purposes, and the applicability of this proposed rule to imports of SA-Completed Cells and Modules that entered the United States both before and after the signing of the Proclamation furthers that goal.

Furthermore, under section 781 of the Act and § 351.226, for the circumvention inquiries at issue, both the preliminary and final determinations will post-date the signing of the Proclamation. In the normal course under Commerce's procedures, there would be no collection of duties or estimated duties until those actions take place. Indeed, for now, so long as they were not already suspended for other reasons, entries of SA-Completed Cells and Modules following the issuance of the Circumvention Inquiries Initiation are still not subject to suspension of liquidation and antidumping and countervailing duty cash deposit requirements. Under Commerce's regulations and normal proceedings, a change to the status of those entries would occur only if Commerce made an affirmative finding in a preliminary or final circumvention determination.

Accordingly, in keeping with Commerce's equal treatment of merchandise covered by a circumvention inquiry, if Commerce makes a determination or determinations of circumvention after the signing of the Proclamation, then the postponement of these actions should be consistent across all entries of SA-Completed Cells and Modules, as long as those entries are before the Date of Termination. To do otherwise would be inconsistent with both the purpose of the Proclamation and the normal application of circumvention determinations to entries that precede a preliminary or final circumvention

[4] Commerce has determined under the Chinese Solar Orders that the country-of-origin is determined by where the solar cell is manufactured. If solar cells from China are sent to Cambodia, Malaysia, Thailand and Vietnam, and then incorporated into solar modules and panels, the solar products incorporating such cells and exported from those four countries remain subject to the Chinese Solar Orders.

determination under 19 CFR 351.226(l). Merchandise that is otherwise considered the same under Commerce's circumvention laws and regulations is treated the same.

Commerce is invoking all authorities provided for in the Proclamation, pursuant to section 318(a) of the Act, as well as Commerce's authority to issue regulations under section 781 of the Act (19 U.S.C. 1677j), to take these proposed steps to respond to the emergency declared in the Proclamation. Section 351.226(l) governs when merchandise found to be circumventing an antidumping or countervailing duty order should be subject to suspension of liquidation and cash deposit requirements. Thus, in light of the emergency, Commerce is proposing to extend the time period established by regulation for Commerce to instruct CBP to begin suspension of liquidation and cash deposit requirements and the date on which suspension of liquidation and cash deposit requirements will begin, including for entries of SA-Completed Cells and Modules that Commerce previously instructed CBP to continue to suspend pursuant to the initiation of the circumvention inquiries.[5]

In addition, Commerce is proposing to permit, for the duration provided for in the Proclamation, the importation, free of the collection of antidumping or countervailing duties and estimated duties, if applicable, of SA-Completed Cells and Modules that are not already subject to an existing antidumping or countervailing duty order as of the date the Proclamation was signed, *i.e.,* June 6, 2022. Cash deposit requirements would not apply to SA-Completed Cells and Modules that were entered, or withdrawn from warehouse, for consumption before the Date of Termination.

Finally, it should be noted that Commerce has determined that, although there is an emergency declared by the Proclamation, the existing regulations at 19 CFR part 358 (''Supplies for Use in Emergency Relief Work''), which set out procedures for the duty-free importation of certain merchandise to be used in emergency relief work, would not apply to the solar cells and modules that are the subject of this proposed rule. This is because none of the merchandise addressed by the Proclamation was subject to an existing antidumping or countervailing duty order as of the date the Proclamation was signed. By its terms, part 358 applies only to merchandise already subject to an antidumping or countervailing duty order. Instead, this proposed rule, rather than part 358, would temporarily govern the importation free of collection of certain duties and estimated duties, if applicable, for SA-Completed Cells and Modules, which were not subject to an existing antidumping or countervailing duty order as of the date the Proclamation was signed. Importers of merchandise subject to this proposed rule would not need to comply with the requirements of part 358, including the requirement for the submission of prior written requests.

As set forth in the Proclamation and described in greater detail above, immediate action is needed. Drought conditions coupled with heatwaves are simultaneously causing projected electricity supply shortfalls and record electricity demand. The United States has been unable to import solar modules in sufficient quantities to achieve our climate and clean energy goals, help combat rising energy prices, and, most immediately, ensure electricity grid resource adequacy. As explained above, imports of solar modules from Southeast Asia account for approximately three-quarters of all solar module imports, so it is vital that we address this issue. Roughly half of solar deployment that had been anticipated over the next year is currently in jeopardy, with solar projects being postponed or canceled.

Therefore, with the President having proclaimed that immediate action is needed to ensure that the United States has access to a sufficient supply of solar cells and modules, as authorized in the Proclamation, Commerce would, if applicable, do the following: (1) issue instructions to CBP to cease suspending liquidation of entries already suspended pursuant to the circumvention inquiries at issue. If, at the time Commerce issues its instructions, the entries are suspended only for purposes of the circumvention inquiries, Commerce would direct CBP to liquidate those entries and refund any cash deposits thus far collected from those entries; [6] (2) in the event of an affirmative preliminary and/or final determination of circumvention, postpone instructing CBP to suspend liquidation and to collect cash deposits of estimated duties on entries of SA-Completed Cells and Modules; and (3) permit the importation of those SA-Completed Cells and Modules free of collection of antidumping and countervailing estimated duties and duties until the Date of Termination. Furthermore, (4) in the event of an affirmative final determination of circumvention, if Commerce subsequently issues instructions to CBP that cover certain SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption before the Date of Termination, in accordance with section 751 of the Act, Commerce would direct CBP to liquidate entries of that merchandise without regard to antidumping or countervailing duties. Commerce would continue to conduct the circumvention inquiries at issue under its normal procedures and, in the event of an affirmative final determination, would direct CBP to begin suspension of liquidation and require cash deposits for each unliquidated entry of SA-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination. Taken together, these proposed actions would help ensure that the United States has a sufficient supply of solar cells and modules to assist in meeting our electricity generation needs while domestic solar manufacturing capacity continues to expand. This proposed rule therefore responds directly and appropriately to the emergency that is the subject of the Proclamation.

In addition, if Commerce issues an affirmative final determination of circumvention, Commerce would instruct CBP to suspend liquidation and collect cash deposits on SA-Completed Cells and Modules that are entered, or are withdrawn from warehouse, for consumption on or after the Date of Termination. This proposed action would ensure that once this emergency has passed, suspension of liquidation and collection of cash deposits of antidumping and countervailing estimated duties and duties would be instituted and applied prospectively, to post-Date of Termination entries, as set forth by statute and regulation.

Commerce is interested in hearing from the public concerning this proposed rule and will accept comments for 30 days after the date of publication of this proposed rule.

[5] The implementation of this proposed rule in no way would affect CBP's ability to act pursuant to its own independent authorities, including its ability to determine if the declared country of origin of merchandise upon importation has been misidentified and suspend liquidation and collect deposits of estimated AD/CVD duties on entries subject to the Certain Solar Orders.

[6] CBP will only cease suspension of liquidation and collection of cash deposits for entries on the basis of the circumvention inquiries. If the entries at issue continue to be suspended on another basis at the time Commerce issues its instructions to CBP, no liquidation or refunding of cash deposits will occur.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is economically significant for purposes of Executive Order 12866.

Regulatory Impact

The Proclamation explains that, in recent years, the vast majority of solar modules installed in the United States were imported, with approximately three-quarters of those imports in 2020 coming from Southeast Asia. The Proclamation states, however, that recently the United States has been unable to import solar modules in sufficient quantities to ensure solar capacity additions necessary to ensure electricity grid resource adequacy. The supply constraints on solar modules and module components have put at risk near-term solar capacity additions that could otherwise have the potential to help ensure the sufficiency of electricity generation to meet customer demand, and solar projects across the country are being postponed or canceled. Furthermore, the Proclamation states that roughly half of the domestic deployment of solar modules anticipated over the next year is currently in jeopardy due to insufficient supply. Accordingly, Commerce is taking action pursuant to the Proclamation under section 318(a) of the Act.

The Proclamation identifies certain threats to the ability of the United States to provide sufficient electricity generation to serve expected demand, declares an emergency to exist, and states that immediate action is needed to ensure access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs. This proposed regulatory action supports the Proclamation. Multiple government publications describe the expansive growth of the solar sector in the United States, the rapid pace of solar installations, and the critical role that this sector plays in meeting the Nation's energy needs and addressing the climate crisis.

For example, the U.S. Energy Information Administration (EIA) estimated in January 2022 that solar power would account for nearly half of new U.S. electric generating capacity for the year based on its expectation that U.S. utility-scale solar generating capacity would grow by 21.5 gigawatts in 2022.[7] The EIA projects that the share of U.S. power generation from renewables will increase from 21% in 2021 to 44% by 2050, and that solar will account for 51% of renewable energy generation.[8]

Additionally, in September 2021, the U.S. Department of Energy released the Solar Futures Study[9] detailing the significant role solar will play in decarbonizing the nation's power grid. The study shows that, by 2035, solar energy has the potential to power 40% of the nation's electricity, drive deep decarbonization of the grid, and employ as many as 1.5 million people—without raising electricity prices. Decarbonizing the entire energy system could result in as much as 3,000 GW of solar power by 2050 due to increased electrification in the transportation, buildings, and industrial sectors.

In taking the proposed actions described in this proposed rule, Commerce would act to respond to the emergency identified in the Proclamation. The proposed actions would remove uncertainty concerning potential antidumping and countervailing estimated duties or duties that might otherwise be owed on merchandise subject to the circumvention inquiries and entered before the Date of Termination. The uncertainty surrounding the potential antidumping and countervailing estimated duties or duties may be contributing to the circumstances surrounding the insufficient imports of modules from Southeast Asia. Given the strong interest in ensuring access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs, we would remove this source of market uncertainty in order to encourage sufficient imports of modules from these Southeast Asian countries until the Date of Termination and while domestic capacity expands. However, we lack data to quantify these effects, and we seek public comment on these impacts.

While this proposed regulatory action might result in decreased totals of antidumping or countervailing duties collected, the quantification of any such decrease would be speculative. At the time of publication of this notice, Commerce is conducting circumvention inquiries involving certain cells and modules exported from the Southeast Asian countries of Cambodia, Malaysia, Thailand, and Vietnam. Commerce has not yet made any determinations regarding whether these cells and modules are circumventing existing antidumping and countervailing duty orders. Accordingly, whether antidumping or countervailing duties will apply to these cells and modules is unknown at the time of publication of this notice. Further, even if there is a final determination that circumvention is taking place, the total antidumping and countervailing duties that would be collected from any such imports cannot, at this time, be calculated with any degree of precision.

Finally, this rule would provide for an exemption from the collection of cash deposits and duties, if applicable, on imports of certain SA-Completed Cells and Modules, and Commerce assesses that the affected importers would not need to take additional action to come into compliance with this rule were it to be put into effect.

Regulatory Flexibility Act

Pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Commerce has prepared this Initial Regulatory Flexibility Analysis. A statement of the objectives of, and legal basis for, the proposed rule is provided earlier in this preamble and are not repeated here.

This proposed rule is intended to temporarily encourage sufficient imports of solar cells and modules from these Southeast Asian countries in order to respond to the emergency declared in the Proclamation. It would be in effect for a limited time (24 months from the date of the Proclamation or until the emergency is terminated, whichever occurs first). The proposed rule would postpone and waive the application of certain regulations related to circumvention inquiries, if otherwise applicable, to certain SA-Completed Cells and Modules exported from the identified Southeast Asian countries. Additionally, it would permit the importation of those SA-Completed Cells and Modules free of collection of antidumping and countervailing estimated duties and duties. In doing so, it would directly affect importers of certain SA-Completed Cells and Modules exported from the identified Southeast Asian Countries. The number of importers that are classified as small entities is unknown.

The proposed rule would provide a benefit to regulated entities, including small entities, by removing uncertainty concerning potential antidumping and countervailing estimated duties or

[7] U.S. Energy Information Administration, *Solar Power Will Account for Nearly Half of New U.S. Electric Generating Capacity in 2022* (Jan. 10, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=50818.*

[8] U.S. Energy Information Administration, *EIA Projects that Renewable Generation Will Supply 44% of U.S. Electricity by 2050* (Mar. 18, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=51698.*

[9] U.S. Department of Energy, *Solar Futures Study* (Sept. 2021), *https://www.energy.gov/eere/solar/solar-futures-study.*

duties that might otherwise be owed on merchandise subject to the circumvention inquiries and entered before the Date of Termination. Were there to be a final determination in the inquiries involving certain cells and modules exported from the four Southeast Asian countries that circumvention is taking place, the rule could also potentially provide a benefit by allowing importers, including small entities, to receive an exemption from the collection of antidumping and countervailing cash deposits and duties, if applicable, on imports of certain SA-Completed Cells and Modules. As a result, it would not place a substantial number of small entities who are importers, or any segment of these small entities, at a significant competitive disadvantage. But any benefit resulting from such an exemption would be entirely speculative at this point. As noted in the regulatory impact analysis above, Commerce has not yet made any determinations regarding whether these cells and modules are circumventing existing antidumping and countervailing duty orders. Accordingly, whether antidumping or countervailing duties will apply to these cells and modules, much less the value of those duties, is not currently known. The proposed rule has no projected reporting, recordkeeping and other compliance requirements and does not duplicate, overlap, or conflict with other Federal rules.

Because the rule would not result in direct adverse impacts on small entities and because the benefits it would provide to importers, including those who are small entities, are not readily quantifiable (*i.e.,* reducing uncertainty) or are merely speculative insofar as they depend on an unknown outcome of an ongoing inquiry, Commerce does not expect the proposed action to have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Therefore, Commerce believes there are no regulatory alternatives for reducing burdens on small entities.

Commerce invites comments on this Initial Regulatory Flexibility Analysis, including information about the direct impact on small entities, including importers and members of other industries directly affected by this proposed rule.

Paperwork Reduction Act

This proposed rule contains no information collection subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 362

Administrative practice and procedure, Antidumping duties, Countervailing duties, Emergency powers.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

■ For the reasons stated in the preamble, the Department of Commerce proposes to amend 19 CFR chapter III by adding part 362 as follows:

PART 362—PROCEDURES COVERING SUSPENSION OF LIQUIDATION, DUTIES AND ESTIMATED DUTIES IN ACCORD WITH PRESIDENTIAL PROCLAMATION 10414

Sec.

Authority: Proc. 10414, 87 FR 35067; 19 U.S.C. 1318.

§ 362.101 Scope.

This part sets forth the actions the Secretary is taking to respond to the emergency declared in Presidential Proclamation 10414.

§ 362.102 Definitions.

For purposes of this part:

Act means the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*).

Applicable Entries means the entries of Southeast Asian-Completed Cells and Modules subject to the Solar Circumvention Inquiries that are entered into the United States, or withdrawn from warehouse, for consumption, before the Date of Termination.

CBP means United States Customs and Border Protection of the United States Department of Homeland Security.

Certain Solar Orders means Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order; and Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order.

Date of Termination means June 6, 2024 or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first.

Secretary means the Secretary of Commerce or a designee.

Solar Circumvention Inquiries means some or all of the inquiries at issue in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders.

Southeast Asian-Completed Cells and Modules means crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of Vietnam using parts and components manufactured in the People's Republic of China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. Southeast Asian-Completed Cells and Modules does not mean solar cells and modules that, on June 6, 2022, the date Proclamation 10414 was signed, were already subject to Certain Solar Orders.

§ 362.103 Actions Being Taken Pursuant to Presidential Proclamation 10414 and Section 318(a) of the Act.

(a) *Importation of applicable entries free of duties.* The Secretary will permit the importation of Applicable Entries free of the collection of antidumping and countervailing estimated duties under sections 701, 731, 751 and 781 of the Act until the Date of Termination. Part 358 of this chapter shall not apply to these imports.

(b) *Suspension of liquidation and collection of cash deposits.* (1) To facilitate the importation of Southeast Asian-Completed Cells and Modules without regard to estimated antidumping and countervailing duties, notwithstanding § 351.226(l) of this chapter, Commerce shall do the following with respect to estimated duties:

(i) Where, based on initiation of the Solar Circumvention Inquiries, Commerce previously instructed CBP to continue to suspend liquidation of entries of Southeast Asian-Completed Cells and Modules that were already subject to suspension and to continue to collect cash deposits of estimated duties, the Secretary will instruct CBP to discontinue such suspension of liquidation and collection of cash deposits based on the circumvention inquiry. If at the time instructions are conveyed to CBP the entries at issue are suspended and cash deposits collected only on the basis of the circumvention inquiries, then Commerce will direct CBP to liquidate the entries without

regard to antidumping and countervailing duties and to refund cash deposits collected on that basis.

(ii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries before the Date of Termination, the Secretary will not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated duties in connection with the affirmative determination for Applicable Entries.

(2) In the event of an affirmative final determination of circumvention in the Solar Circumvention Inquiries, notwithstanding § 351.226(l) of this chapter, the Secretary will direct CBP to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination.

(c) *Waiver of assessment of duties.* In the event the Secretary issues an affirmative final determination of circumvention in the Solar Circumvention Inquiries and thereafter, in accordance with other segments of the proceedings, pursuant to section 751 of the Act and § 351.212(b) of this chapter, issues liquidation instructions to CBP, the Secretary will direct CBP to liquidate Applicable Entries without regard to antidumping and countervailing duties that would otherwise apply pursuant to an affirmative final determination of circumvention.

§ 362.104 Certifications.

Nothing in this section shall preclude the Secretary from requiring a certification for Southeast Asian-Completed Cells and Modules pursuant to § 351.228 of this chapter in the event of an affirmative preliminary or final determination in the Solar Circumvention Inquiries.

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BILLING CODE 3510–DS–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Freedom of Information Act Regulations

AGENCY: Central Intelligence Agency.

ACTION: Notice of proposed rulemaking and request for public comment.

SUMMARY: The Central Intelligence Agency (CIA or the Agency) has undertaken and completed a review of its public regulations governing its implementation of the Freedom of Information Act (FOIA), as amended by the FOIA Improvement Act of 2016. As a result of this review, the Agency proposes to revise its FOIA regulations concerning the requirements for filing FOIA requests and CIA's procedures for processing and reviewing such requests. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

DATES: Comments will be accepted until August 30, 2022.

ADDRESSES: All submissions must be in English. Comments may be submitted by the following methods: By mail to Brian C. O'Neill, Director, Advanced Data Lifecycle Solutions, Central Intelligence Agency, Washington, DC 20505; or by email to *FedRegComments@ucia.gov.* Please include ''FOIA PROPOSED RULEMAKING'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Brian C. O'Neill; (571) 280–2899.

SUPPLEMENTARY INFORMATION: CIA is amending its regulations governing implementation of the FOIA, as amended by the FOIA Improvement Act of 2016. CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations found in chapter 19 of title 32 of the Code of Federal Regulations.

These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by ensuring compliance with all legal requirements and by increasing the transparency and clarity of the regulations governing the Agency's FOIA program.

Statutory and Executive Order Reviews

Executive Order 12866 and 13563

These proposed regulations have been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review,* section 1, *Statement of Regulatory Philosophy and Principles,* and in accordance with Executive Order 13563, *Improving Regulation and Regulatory Review,* section 1, General Principles of Regulation. Because these proposed regulations do not constitute a significant regulatory action under section 3(f) of Executive Order 12866, they were not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

Paperwork Reduction Act

Because these proposed regulations do not involve a collection of information, the review and OMB clearance requirements of the Paperwork Reduction Act, 44 U.S.C. 3506 & 3507, do not apply.

Executive Order 12988

These proposed regulations meet the applicable standards set forth in Executive Order 12988, *Civil Justice Reform.*

Executive Order 13132

Because these proposed regulations 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, they do not constitute policies that have federalism implications under Executive Order 13132. Thus, the requirements of Executive Order 13132 sections 2, 3, and 8, governing agency policies or regulations do not apply.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), CIA has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. These proposed regulations pertain to CIA's policies and practices for processing FOIA requests, and do not impose any new requirements on small entities.

Unfunded Mandates Reform Act of 1995

These proposed regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a) & 1533(a).

Small Business Regulatory Enforcement Fairness Act of 1996

These proposed regulations will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Thus, they do not constitute major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

National Environmental Policy Act of 1969

CIA has reviewed these proposed regulations for purposes of the National Environmental Policy Act of 1969 (NEPA) and has determined that these proposed regulations do not constitute ''major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(C).

List of Subjects in 32 CFR Part 1900

Administrative practice and procedure, Classified information, Freedom of information.

As stated in the preamble, the CIA proposes to revise 32 CFR part 1900 to read as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

General

Sec.

Authority: 5 U.S.C. 552; 50 U.S.C. 3001 *et seq.;* 50 U.S.C. 3501 *et seq.;* 50 U.S.C. 3141; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

General

§ 1900.01 Authority and purpose.

(a) This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and in accordance with the CIA Information Act of 1984 (50 U.S.C. 3141); section 102A(i) of the National Security Act of 1947, as amended (50 U.S.C. 3024(i)); and section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 3507). It contains procedures that CIA follows in processing requests for records submitted under the FOIA. The procedures in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines).

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974 (5 U.S.C. 552a) are processed in accordance with CIA's Privacy Act regulations, set forth at 32 CFR part 1901, as well as under this part.

(c) Other than as expressly provided in this part, this part creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

§ 1900.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator.

(b) *Agency Release Panel (ARP)* means the Agency's forum for reviewing information review and release policy, assessing the adequacy of resources available to all Agency declassification and release programs, and considering administrative appeals in accordance with this part.

(c) *Chief FOIA Officer* means the senior CIA official, at the CIA's equivalent of the Assistant Secretary level, who has been designated by the Director of the CIA (DCIA) to have Agency-wide responsibility for the CIA's efficient and appropriate compliance with the FOIA.

(d) *CIA Information and Privacy Coordinator* or *Coordinator* means the official who serves as the Agency manager of information review and release activities implementing the FOIA.

(e) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail.

(f) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages,* which means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction,* which means generation of a copy of a requested record in a form appropriate for release;

(3) *Review,* which means all time expended in preparing a record for release, including examining a record to determine whether any portion must be withheld pursuant to law and in effecting any necessary deletions but excludes personnel hours expended in resolving general legal or policy issues; and

(4) *Search,* which means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids, including time spent determining whether records located during a search are responsive to the request.

(g) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial use.* Requests in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests, which can include furthering those interests through litigation.

(2) *Educational or non-commercial scientific institution, or a representative of the news media*—(i) *Educational or non-commercial scientific institution.* Requests made under the auspices of an accredited United States institution engaged in scholarly or scientific research and which are for information not for commercial use, but rather intended to be used in specific scholarly or scientific works.

(ii) *Representative of the news media.* Requests from any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and individual or corporate publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered a representative of the news media. A publishing contract would be the clearest proof that publication is expected, but the Agency may also look to the past publication record of a requestor in making this determination.

(3) *All other.* Requests not described in paragraph (g)(1) or (2) of this section.

(h) *FOIA Public Liaison* means the CIA supervisory official(s) who shall assist in the resolution of any disputes between a FOIA requester and the Agency and to whom a FOIA requester may direct a concern regarding the service he or she has received from CIA and who shall respond on behalf of the Agency as prescribed in this part.

(i) *FOIA Requester Service Center* means the office within the CIA where a FOIA requester may direct inquiries regarding the status of a FOIA request he or she filed at the CIA, requests for guidance on narrowing or further defining the nature of scope of his or her FOIA request, and requests for general information about the FOIA program at the CIA.

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue.

§ 1900.03 Contact for general information and requests.

(a) A member of the public seeking to file a FOIA request or an administrative appeal must direct a written request or appeal via mail to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, or online at: *https://www.foia.cia.gov/foia_request/form,* in accordance with the requirements of this part.

(b) Requesters may view the status of pending FOIA requests at *https://www.cia.gov/readingroom/request/status.* In addition, inquiries regarding the status of a FOIA request, obtaining guidance on narrowing or further defining the nature or scope of a FOIA request, or obtaining general information about the FOIA program at CIA, may be directed to the CIA FOIA Requester Service Center, Central Intelligence Agency, Washington, DC 20505, via facsimile at (703) 613–3007, or via telephone at (703) 613–1287. Collect calls cannot be accepted.

(c) Concerns, suggestions, comments, or complaints regarding the service received from CIA or regarding the Agency's general administration of the FOIA may be directed to the FOIA Public Liaison, Central Intelligence Agency, Washington, DC 20505, via facsimile at 703–613–3007, or via telephone at 703–613–1287. Collect calls cannot be accepted.

§ 1900.04 Suggestions and complaints.

The CIA remains committed to administering a results-oriented and citizen-centered FOIA program, to processing requests in an efficient, timely and appropriate manner, and to working with requesters and the public to continuously improve Agency FOIA operations. The Agency welcomes suggestions, comments, or complaints regarding its administration of the FOIA. Members of the public shall address all such communications to the FOIA Public Liaison as specified at § 1900.03(c). The Agency may respond as determined feasible and appropriate under the circumstances. Requesters seeking to raise concerns about the service received from the CIA FOIA Requester Service Center may contact the FOIA Public Liaison after receiving an initial response from the CIA FOIA Requester Service Center. The FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between a FOIA requester and the Agency.

Filing of FOIA Requests

§ 1900.11 Preliminary information.

(a) Members of the public shall address all communications to the CIA Coordinator as specified at § 1900.03. Any requests for access to records which are not directed to the Information and Privacy Coordinator, in accordance with the requirements set forth in §§ 1900.03 and 1900.12, shall not be considered proper FOIA requests.

(b) The CIA shall not accept a request for records under the FOIA that does not have a physical mailing address or email address where CIA can send a response or other correspondence related to the request.

(c) The CIA shall not accept a request for records under the FOIA or an appeal of an adverse determination regarding a FOIA request submitted by a member of the public who owes outstanding fees for information services at this or other Federal agencies and will terminate the processing of any pending requests submitted by such persons to the CIA.

(d) The CIA shall not accept requests for records under the FOIA submitted by any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof, or from any representative of such a government entity.

§ 1900.12 Requirements as to form and content.

(a) *Required information.* Requests must reasonably describe the records of interest sought by the requester, as set forth at 5 U.S.C. 552(a)(3). This means that documents must be described sufficiently so that Agency professionals who are familiar with the subject area of the request are able, with a reasonable effort, to determine which particular records are within the scope of the request. In order to assist CIA in identifying the specific records sought, all requesters are encouraged to be as specific as possible in describing the records they are seeking by including, for example, the relevant date or date range, the title of the record, the type of record (such as memorandum or report), the specific event or action to which the record refers, and the subject matter. Requests for electronic communications should attempt to specify a sender, recipient, date range, and subject or keyword. Extremely broad or vague requests or requests requiring research do not satisfy the requirement that a request be ''reasonably described.''

(b) *Requirements as to identification of requester.* (1) Individuals seeking access to records concerning themselves shall provide their full (legal) name, address, date and place of birth together with a signed statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(2) Attorneys or other individuals retained to represent a requester shall provide evidence of such representation

by submission of a representational agreement or other document which establishes the relationship with the requester.

(c) *Additional information for fee determination.* A requester should provide sufficient information to allow the Agency to determine the appropriate fee category for the request. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(d) *Additional communication with requester.* Although the Agency is not required to answer questions, create records, or perform research in response to a FOIA request, when the request lacks sufficient clarity to allow the records to be located with a reasonable effort, the Agency will provide the requester with an opportunity to narrow or further define the nature or scope of the request. Additionally, individuals may contact the CIA FOIA Requester Service Center for the purpose of obtaining recommendations as to how to frame or narrow a particular request.

§ 1900.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions in paragraphs (b) through (j) of this section relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served; or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in § 1900.01.

(d) *Time for fee waiver requests and appeals.* Fee waiver requests and appeals must be directed to the Coordinator in accordance with §§ 1900.03 and 1900.11. It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision. When making fee waiver requests or appeals, no particular format is required other than a statement of the basis for the request or appeal.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request a specific commitment from the requester to pay applicable fees when the Agency it estimates that fees will exceed $100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed in the absence of a response from the requester. This action, of course, would not prevent a requester from refiling the FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested and will thereafter deem the request closed in the absence of a response from the requester.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

TABLE 1 TO PARAGRAPH (g)(1)

Personnel Search and Review		
Clerical/Technical	Quarter hour	$5.00
Professional/Supervisory	Quarter hour	10.00
Manager/Senior Professional	Quarter hour	18.00
Duplication		
Photocopy (b&w, standard, or legal)	Per page	0.10
Photocopy (color, standard, or legal)	Per page	1.00
Microfiche	Per frame	0.20
CD (bulk recorded)	Each	10.00
CD (recordable)	Each	20.00
Pre-printed (if available)	Per 100 pages	5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than listed in the schedule in table 1 to paragraph (g)(1) of this section (*e.g.,* a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) may also be available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (*e.g.,* photographs, maps, or published reports), actual cost or amounts authorized by statute will be charged. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in

making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Charging fees.* In responding to FOIA requests, CIA shall assess fees as follows unless a waiver or reduction of fees has been granted under paragraph (b) of this section:

(1) *Commercial use requesters.* Charges which recover the full direct costs related to search, review, and duplication of responsive records (if any);

(2) *Educational or non-commercial scientific institutions, or representatives of the news media.* Charges for duplication of responsive records (if any) beyond the first 100 pages; and

(3) *All other requesters.* Charges which recover the full direct costs related to search and duplication of responsive records (if any) beyond the first two hours of search time and first 100 pages.

(i) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of [EFFECTIVE DATE OF FINAL RULE], is deemed to be $10.00.

(2) *Requests for personal information.* No fees will be charged for U.S. citizens or lawful permanent residents seeking records about themselves under the Privacy Act; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(3) *Untimely response.* If CIA fails to comply with the FOIA's time limits for responding to a request, CIA will not charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees, except as set forth in paragraph (i)(4) of this section.

(4) *Special circumstances.* (i) If CIA determines that unusual circumstances as defined by the FOIA apply and the Agency has provided timely written notice to the requester, a failure to comply with the time limit shall be excused an additional ten (10) days.

(ii) If CIA determines that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Agency may charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees if the Agency has provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with the requirements of the FOIA, 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, CIA may charge all applicable fees incurred in the processing of the request.

(iii) If a court determines that exceptional circumstances exists, as defined in the FOIA, 5 U.S.C. 552(a)(6)(C), a failure to comply with the time limit shall be excused for the length of time provided by the court order.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

§ 1900.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

CIA Action on FOIA Requests

§ 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1900.11 through 1900.13 shall be considered proper FOIA requests and will be processed under the Freedom of Information Act, 5 U.S.C. 552, this part, and in accordance with any other applicable statutes. Upon receipt, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records.

(b) *Previously-released records.* As an alternative to extensive tasking, search, and review, some requesters may wish to consider limiting the scope of their requests to previously-released records. Searches of such records can often be accomplished expeditiously. Moreover, requests for such records that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in limiting their requests to previously released Agency information, in lieu of traditional processing of a FOIA request, should so indicate in their correspondence.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the mere fact of their existence or nonexistence is itself classified under Executive Order 13526 (or successor orders), or revealing of intelligence sources and methods protected pursuant to section 102A(i)(1) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise the requester of the right to an administrative appeal.

(d) *Time for response.* The Agency will make every effort to respond to a proper FOIA request within the statutory 20-day time period after receipt of the request. However, the current volume of requests routinely requires that the Agency seek additional time from a requester pursuant to § 1900.33.

§ 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) CIA components tasked pursuant to a FOIA request shall conduct a reasonable search of all relevant record systems within their areas of responsibility which have not been exempted from search, review, and disclosure under the FOIA by the CIA Information Act of 1984 and which are reasonably likely to contain records responsive to the request. They shall:

(i) Determine whether any responsive records exist;

(ii) Determine whether, and to what extent, any FOIA exemptions, as set forth in 5 U.S.C. 552(b), apply to the responsive records;

(iii) Review the exempt records to determine whether they contain any reasonably segregable, non-exempt material;

(iv) Approve the disclosure of all non-exempt records, or portions of records, within their areas of responsibility; and

(v) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another component or interested party.

(2) In making the decisions discussed in paragraph (a)(1) of this section, the CIA component officers shall be guided by the applicable law as well as the procedures specified at §§ 1900.31 and 1900.32 regarding confidential commercial or financial information and

personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable, any CIA records containing information originated by other CIA components shall be forwarded to those entities for appropriate action in accordance with paragraph (a) of this section. Records originated by other Federal agencies or CIA records containing other Federal agency information shall be forwarded to such agencies for appropriate action in accordance with the applicable procedures of each agency.

§ 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester of its determination regarding the request. With respect to any records that the Agency determines may be released, the Agency will provide copies. For any records or portions of records that the Agency determines must be denied, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA ''reading room'' in the metropolitan Washington, DC, area. Access will be granted after applicable and accrued fees have been paid. All such requests shall be in writing and addressed pursuant to § 1900.03. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired. The Agency has an electronic FOIA reading room on its website, located at *www.cia.gov/readingroom,* which contains records that the Agency has previously publicly released under FOIA as well as under other information review and release activities.

Additional Administrative Matters

§ 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency from a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means confidential commercial or financial information obtained by the United States Government from a submitter that is reasonably believed to contain information exempt from disclosure under 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments. This term does not include any other Federal Government entity.

(b) *Designation of confidential commercial or financial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial or financial information and hence protected from required disclosure pursuant to 5 U.S.C. 552(b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information if, after reviewing the request, the responsive records, and, if applicable, any appeal by the requester, the Agency determines that it may be required to release the records, provided:

(i) The submitter has in good faith designated the information as confidential commercial or financial information; or

(ii) The Agency believes the information may be exempt from disclosure pursuant to 5 U.S.C. 552(b), but is unable to make that determination without additional information; and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial or financial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) The Agency shall specify a reasonable time period within which the submitter must respond to the notice described in paragraphs (c)(1) and (2) of this section with a detailed statement identifying any claims of confidentiality, supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(iii) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objections to disclosure of the business information identified therein.

(4) *Decision and notice of intent to disclose.* (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency determines that if must disclose the requested records, notwithstanding the submitter's objections, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified in paragraph (a)(2) of this section, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if the Agency determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or Federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1900.32 Procedures for information concerning other persons.

(a) Personal information concerning individuals other than the requester shall not be disclosed in response to a FOIA request if, as set forth in 5 U.S.C. 552(b)(6), the release of such information would constitute a clearly unwarranted invasion of personal privacy. *Personal information* is any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information. *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) In making the required determination under this section and pursuant to 5 U.S.C. 552(b)(6), the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party waiving all or some of their privacy rights, or to submit proof that the third party is deceased (*e.g.,* a copy of a death certificate, a published obituary, etc.). Third-party waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component;

(2) The business demands imposed on the component by the DCIA or otherwise by law;

(3) The information review and release demands imposed by the Congress or other governmental authority; and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities*—(1) *Chief FOIA Officer.* The Chief FOIA Officer shall monitor the Agency's compliance with the requirements of the FOIA and administration of its FOIA program. The Chief FOIA Officer shall keep the DCIA, the General Counsel of the CIA, and other officials appropriately informed regarding the Agency's implementation of the FOIA and make recommendations, as appropriate. The Chief FOIA Officer shall designate one or more CIA FOIA Public Liaisons. The CIA FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between requesters and the Agency.

(2) *Multi-track processing.* The Agency shall exercise due diligence in its responsibilities under the FOIA. The Agency shall designate a specific track for requests that are granted expedited processing, as set forth in § 1900.34. In addition, although the Agency will generally process requests and administrative appeals on a ''first in, first out'' basis, based upon a reasonable allocation of available resources, the Agency may designate additional processing queues that distinguish between simple and more complex requests based on the estimated amount of time or work needed to complete the processing of the request. The Agency may provide requesters in a slower queue an opportunity to limit the scope of their request in order to qualify for faster processing.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA due to unusual circumstances, as defined in the FOIA, and the Agency extends the time limit on that basis, the Agency shall, before the expiration of the 20-day time limit to respond, notify the requester in writing of the unusual circumstances involved and of an estimated date by which processing of the request is expected to be completed. When the extension exceeds 10 days, the Agency shall, as described in the FOIA, provide the requester with an opportunity to modify the scope of the request or arrange an alternative time period for processing the original or modified request. CIA's FOIA Requester Service Center or the CIA FOIA Public Liaison are available to assist in this process.

§ 1900.34 Requests for expedited processing.

(a) *Expedited processing requests.* Requests for expedited processing shall be submitted to the Coordinator in accordance with §§ 1900.03, 1900.11, and 1900.12. Such requests will be approved only when a compelling need is established to the satisfaction of the Agency. Within ten (10) days of receipt of a request for expedited processing, the Agency will decide whether to grant expedited processing and will notify the requester of its decision. A *compelling need* is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal Government activity.

(b) *Expedited processing appeals.* Denials of requests for expedited processing may be appealed to the CIA's Agency Release Panel via the Coordinator and shall be acted upon expeditiously.

CIA Action on FOIA Administrative Appeals

§ 1900.41 Designation of authority to hear appeals.

(a) *Agency Release Panel (ARP).* Appeals of initial adverse decisions under the FOIA shall be reviewed by the ARP which shall issue the final Agency decision.

(b) *ARP membership.* The ARP is chaired by the Director, Advanced Data Lifecycle Solutions (ADLS) (or the Deputy Director, ADLS, acting on the Director's behalf), and is composed of the Information Review Officers from the various Directorates, a voting representative of the Office of General Counsel, as well as the representatives of the various CIA release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP. The Chair may request interested parties to participate when special equities or expertise are involved.

§ 1900.42 Right of appeal and appeal procedures.

(a) *Right of appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, or no records are located in response to a request. In addition, requesters may appeal denials of requests for expedited processing and fee waivers, as well as the adequacy of a search for records responsive to a request. The Agency will apprise all requesters in writing of their right to file an administrative appeal to the ARP through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within ninety (90) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another Federal agency.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the relevant components for appropriate action.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt, except for appeals of denial of expedited processing, for which the Agency shall attempt to complete action within ten (10) business days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to § 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

§ 1900.43 [Reserved]

§ 1900.44 Action by appeals authority.

(a) The Coordinator, acting in the capacity of Executive Secretary of the ARP, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide the ARP membership with a summary of the request and issues raised on appeal for the Panel's consideration, and make available to the Panel the complete administrative record of the request consisting of the request, the document(s) at issue (in redacted and full-text form), if any, and the findings and recommendations of the relevant components.

(b) The ARP shall determine whether an appeal before the Panel is meritorious. The ARP may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the CIA Chief Data Officer (CDO) for resolution. In the event of a disagreement with any decision by the CDO, Directorate or Independent Office heads may appeal to the CIA Chief Operating Officer (COO) for a final Agency decision. The final Agency decision shall reflect the vote of the ARP, unless the CDO or COO disagrees with the ARP and makes a superseding final Agency decision.

(c) Appeals of denials of requests for fee waivers or reductions and/or denial of requests for expedited processing shall go directly from the Coordinator to the Agency Release Panel for a final Agency determination.

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the ARP shall promptly prepare and communicate the final Agency decision to the requester. With respect to any adverse Agency determination, that correspondence shall state the reasons for the decision, and include a notice of a right to judicial review.

Dated: June 13, 2022.

Brian C. O'Neill,

Director, Advanced Data Lifecycle Solutions.

[FR Doc. 2022–13361 Filed 6–30–22; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[NHTSA–2022–0048]

RIN 2127–AM29

Exemptions From Average Fuel Economy Standards; Passenger Automobile Average Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed rule; proposed decision to grant exemption.

SUMMARY: This proposed decision responds to petitions filed by several low volume manufacturers requesting exemption from the generally applicable corporate average fuel economy (CAFE) standards for several model years (MYs). The low volume manufacturers and MYs are as follows: Aston Martin Lagonda Limited for MYs 2008–2023, Ferrari N.V. for MYs 2016–2018 and 2020, Koenigsegg Automotive AB for MYs 2015 and 2018–2023, McLaren Automotive for MYs 2012–2023, Mobility Ventures LLC for MYs 2014–2016, Pagani Automobili S.p.A for MYs 2014 and 2016–2023, and Spyker Automobielen B.V. for MYs 2008–2010. NHTSA proposes to exempt these manufacturers from the generally applicable CAFE standards for the model years listed and establish alternative standards for each individual manufacturer at the levels outlined below.

DATES: Comments are requested on or before August 1, 2022.

ADDRESSES: You may send comments, identified by Docket No. NHTSA–2022–0048, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and

docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* and/or: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Management Facility is open between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Bayer, Engineer, Fuel Economy Division, Office of Rulemaking, by phone at (202) 366–9540 or by fax at (202) 493–2290 or Hannah Fish, Attorney Advisor, Vehicle Standards and Harmonization, Office of the Chief Counsel, by phone at (202) 366–2992 or by fax at (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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1. Introduction

The Energy Policy and Conservation Act (EPCA) of 1975, as amended by the Energy Independence and Security Act (EISA) of 2007,[1] directs the Secretary of Transportation, and the National Highway Traffic Safety Administration (NHTSA) by delegation,[2] to prescribe corporate average fuel economy (CAFE) standards for automobiles manufactured in each model year (MY). EPCA/EISA requires NHTSA to establish CAFE standards for passenger cars and light trucks at the ''maximum feasible average fuel economy level'' that it decides manufacturers can achieve in a MY,[3] based on the agency's consideration of four factors: technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the United States to conserve energy.[4]

Congress provided in EPCA/EISA statutory authority for NHTSA to exempt a low volume manufacturer of passenger automobiles from the industry-wide passenger car standard if NHTSA concludes that the industry-wide passenger car standard is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve, and NHTSA establishes an alternative standard for that manufacturer's fleet of passenger cars at the maximum feasible average fuel economy level that the manufacturer can achieve.[5] Under EPCA/EISA, a low volume manufacturer is one that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the MY two years before the MY for which the exemption is sought, and that will manufacture fewer than 10,000 passenger automobiles in the affected MY. NHTSA may set alternative fuel economy standards in three ways: (1) a separate standard for each exempted manufacturer; (2) a separate standard applicable to each class of exempted automobiles (classes based on design, size, price or other factors); or (3) a single standard for all exempted manufacturers.[6] NHTSA has historically set individual standards for each exempted manufacturer.

49 CFR part 525 contains NHTSA's regulations implementing the statutory requirements in 49 U.S.C. 32902. This part provides content and format requirements for low volume manufacturer petitions for exemption, and specifies that those petitions must be submitted to NHTSA not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.[7] That part also outlines the NHTSA process for publishing proposed and final decisions on petitions in the **Federal Register** and for accepting public input on proposed decisions.[8] A manufacturer's final alternative standard is codified at 49 CFR part 531.

This proposed decision responds to petitions filed by Aston Martin Lagonda Limited (AML) for MYs 2008–2023, Ferrari N.V. (Ferrari) for MYs 2016–2018 and 2020, Koenigsegg Automotive AB (Koenigsegg) for MYs 2015 and 2018–2023, McLaren Automotive (McLaren) for MYs 2012–2023, Mobility Ventures LLC (Mobility Ventures) for MYs 2014–2016, Pagani Automobili S.p.A (Pagani) for MYs 2014 and 2016–2023,[9] and Spyker Automobielen B.V. (Spyker) for MYs 2008–2010. NHTSA proposes to conclude that all seven manufacturers were, and are, eligible for an alternative standard for the listed model years, that the industry-wide passenger car CAFE standard for those model years is more stringent than the maximum feasible average fuel economy level that those manufacturers could, and can, achieve, and that alternative standards should be set at the levels discussed below.

2. Evaluation of Maximum Feasible Fuel Economy Levels

NHTSA has not granted petitions for alternative standards for several low volume manufacturers for several model years, both past and imminent future. If NHTSA does not set an alternative standard for a petitioning manufacturer, that manufacturer would be subject to the industry-wide passenger car standard(s) for the model year(s) in question, and would therefore be liable for civil penalties if it was unable to comply with those standards. At this

[1] 49 U.S.C. 32902.

[2] 49 CFR 1.95.

[3] 49 U.S.C. 32902(a).

[4] 49 U.S.C. 32902(f).

[5] 49 U.S.C. 32902(d).

[6] 49 U.S.C. 32902(d)(2).

[7] 49 CFR 525.6(b). *See also* 54 FR 40689 (Oct. 3, 1989). NHTSA has identified two broad categories of situations that would establish good cause for failure to submit a timely petition: situations in which necessary supporting data for the petition were unavailable until after the due date had passed (for example, a recently incorporated manufacturer might not have adequate time to file an exemption petition 24 months prior to the model year), and second, situations in which a legitimately unexpected noncompliance occurs (for example, if a company providing a low volume manufacturer with its engines goes out of business, and the manufacturer is forced to make an unanticipated engine switch, resulting in lower than expected fuel economy). That said, each determination that good cause was or was not shown for the late filing is made on an individual basis. Manufacturers should reach out to NHTSA as expeditiously as possible if they expect they cannot submit a petition in a timely manner.

[8] 49 CFR 525.8.

[9] Pagani petitioned for alternative standards for MYs 2012–2021 but did not produce any vehicles for sale in the U.S. market in MYs 2012, 2013, and 2015.

point, any NHTSA action prescribing alternative standards for past model years is retroactive.[10]

However, NHTSA has previously granted low volume exemption petitions retroactively when the agency did not publish proposed and final determinations on those exemption petitions prior to the beginning of a model year.[11] In these previous notices, NHTSA recognized that the agency's ability to adopt retroactive rules is very limited but noted that there were compelling reasons to distinguish low volume CAFE exemptions. NHTSA reasoned that if the agency could not issue exemptions from the industry-wide CAFE standards for low volume manufacturers after the commencement of a model year, the agency would, by inaction, have ''totally eliminated the congressionally prescribed'' low volume manufacturer exemption for the manufacturers and years in question.[12] NHTSA also stated that the agency's failure to act upon timely applications for low volume exemptions from the industry-wide CAFE standard is analogous to a situation where an agency misses a statutory deadline and then must issue a rule retroactively, particularly since the manufacturers were in no way responsible for the agency's inaction. To avoid unfairly penalizing the low volume manufacturers for agency inaction that was beyond their control, NHTSA reasoned that EPCA must be construed to implicitly authorize the grant of retroactive low volume exemptions.

Since those decisions, the D.C. Circuit in *General Motors Corp.* v. *National Highway Traffic Safety Administration* stated, in dicta, that EPCA provided support for NHTSA to set retroactive alternative fuel economy standards for low volume manufacturers.[13] In considering the congressional authorization for NHTSA's ability to retroactively amend a CAFE standard for LVMs, but not full-line manufacturers,[14] the court agreed with the agency's explanation that ''granting retroactive exemptions from the generally applicable standard for low-volume manufacturers does not have the same potential for disrupting the statutory scheme as retroactively amending the standard as it applies to the rest of the industry.'' [15] The court also noted that Congress had, in EPCA and accompanying legislative history, ''[sent] out strong signals that [low volume] manufacturers are to be treated differently from the rest of the industry.'' [16] Because LVMs only account for a fraction of the total annual production of passenger automobiles, the LVMs have limited engineering staff and limited market, and each exemption applies to only one manufacturer, ''NHTSA is well within its authority to proceed on a case-by-case basis to exempt small manufacturers from the industry-wide CAFE standards, and establish an individualized CAFE for each exempted manufacturer.'' [17]

If NHTSA could not set standards for these past model years, the low volume manufacturers would be liable for civil penalties for noncompliance, and would have to either pay the penalty or buy unexpired fuel economy credits [18] from other manufacturers to make up the deficit between their fleet fuel economy and the industry-wide passenger car standard. This would be a reversal of several decades of NHTSA policy to grant appropriately submitted petitions for alternative standards,[19] [20] and with functionally no notice. A petitioning manufacturer would have had no reason to believe that NHTSA would not act in a timely fashion on its request based on prior agency practice; that is, it could not have known that it needed suddenly to drastically improve its fleet fuel economy, or alternatively, needed suddenly to pay civil penalties for failure to meet the industry-wide standard. Accordingly, NHTSA continues to believe that EPCA/EISA permits the agency to set alternative standards for past MYs. In support of this position, NHTSA has also deferred sending the required enforcement notification to the manufacturers considered in this notice for falling below the conventional passenger car standards until any outstanding petitions for the given model year have been resolved.[21]

a. Determining ''Maximum Feasible'' Under EPCA/EISA

NHTSA has determined that EPCA/EISA permits the agency to retroactively set fuel economy standards for low volume manufacturers. However, determining *how* to prescribe an alternative fuel economy standard at the maximum feasible level for past model years is a separate question.

NHTSA relies heavily on the information that a low volume manufacturer submits in its petition in determining what maximum feasible fuel economy level is achievable for that manufacturer. Evaluating that information well in advance of a model year for which the petition is submitted invariably aids NHTSA in setting a LVM's alternative standard at its maximum feasible level; attempting to determine now how the agency *would have* evaluated the information included in the petition seems like an imprecise, if not also futile, exercise because the agency already knows what fuel-economy-improving technologies the LVM applied, and importantly (and irrevocably), the vehicles have already been sold. Regardless of what average fuel economy level the LVMs told the agency they could achieve in each model year, the LVMs achieved the levels they achieved, and that information is now before the agency along with the information originally submitted by the LVMs. Thus, the

[10] *See Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 208 (1988). The Supreme Court in *Bowen* v. *Georgetown University Hospital* laid the foundation for modern retroactivity jurisprudence by pronouncing that ''[r]etroactivity is not favored in the law.'' Justice Kennedy, writing for the majority, and Justice Scalia, writing in his concurrence, established the competing principles that a statute can *explicitly* authorize retroactive rulemaking where Congress conveys the power to do so *in express terms,* and a statute can *implicitly* authorize retroactive rulemaking, as in situations where an agency misses a statutory deadline to promulgate a rule, or similarly, where an agency's inaction would have eliminated a Congressionally-prescribed exemption.

[11] *See, e.g.,* 43 FR 33268 (July 31, 1978); 49 FR 11548 (March 1, 1979); 46 FR 29944 (June 4, 1981); 54 FR 40689 (October 3, 1989); 55 FR 12485 (April 4, 1990).

[12] *Supra* note 10.

[13] *General Motors Corp.* v. *National Highway Traffic Safety Admin.,* 898 F.2d 165, at 171 (1990).

[14] *Id.* at 176. The court agreed with NHTSA that it was reasonable to deny a 1987 petition and subsequent petition for reconsideration from General Motors (GM) to retroactively amend the 1984 and 1985 industry-wide CAFE standard. NHTSA had denied GM's petitions on the basis that retroactive amendment would be inconsistent with the EPCA statutory scheme. Subsequent to NHTSA's original petition denials but before *General Motors Corp.,* the Supreme Court addressed retroactive rulemaking in *Bowen,* and NHTSA added to its original argument that ''beyond the independent validity of its petition denials, any retroactive amendment of the [industry-wide] CAFE standard is barred by the *Bowen* decision.''

[15] *Id.* (citing 53 FR 15246 (April 28, 1988)).

[16] *Id.* (citing 44 FR 3710 (Jan. 18, 1979), 53 FR 15241 (April 28, 1988)).

[17] *Id.* at 177. Chief Judge Wald went on to state that, similarly, ''[e]ven assuming a general policy of granting retroactive exemptions after the model year had begun for a segment of the industry accounting for significantly less than one percent of the product, NHTSA could reasonably have a different policy for the other 99 percent.''

[18] NHTSA has deleted all MY 2012 and earlier credits which have reached their expiry date in accordance with 49 CFR 536.5(c)(2).

[19] *See supra,* note 11.

[20] Note, this is a different inquiry than whether the LVM's maximum feasible fuel economy level is the level that it petitioned for, or some other level. NHTSA can grant the petition for review then set a different standard than the manufacturer requested.

[21] If a manufacturer's vehicles in a particular compliance category have below standard fuel economy, NHTSA will provide written notification to the manufacturer that it has failed to meet a particular fleet target standard. *See* 49 CFR 536.5(d)(2).

agency will consider all currently available information in proposing maximum feasible levels for each LVM.

Accordingly, NHTSA believes the question that the agency must answer now for past model years is, given all information currently before the agency, what fuel economy levels were the maximum feasible levels that each LVM could have achieved in each model year?

For imminently future model years, the agency must answer a slightly different set of questions; that is, is the alternative standard that the manufacturer petitioned for maximum feasible, and if not, what, if any, technologically feasible and economically practicable changes would the manufacturer be able to make *in the time frame before model year production would need to commence*? A vehicle manufacturer's model year typically begins before the calendar year (*e.g.,* model year 2020 vehicles are manufactured beginning in calendar year 2019). Vehicle designs (including drivetrains, which are where many fuel economy improvements are made) are often fixed years in advance, which makes adjusting fleet fuel economy difficult without sufficient lead time. For most manufacturers, production plans are solidified at least 18 months in advance of a model year, and there is limited ability to deviate.

While EPCA/EISA does not prescribe a statutory deadline by which NHTSA *must* act on low volume exemption applications, in establishing the regulations implementing EPCA's low volume manufacturer exemption provisions, the agency required low volume manufacturers to submit petitions for exemption ''not later than 24 months before the beginning of the affected model year'' to ''facilitate the low volume manufacturers' planning to comply with the alternative standards, and to ensure that the agency's analysis of those manufacturers' maximum feasible average fuel economy would not be simply a 'rubber stamping' of the individual manufacturer's planned fuel economy, caused by insufficient leadtime for the manufacturer to make changes.'' [22] As a practical matter, the greater the difference between what NHTSA believes is the maximum feasible standard and what the manufacturer petitioned for, the more time the manufacturer likely needs to adjust product designs and plans to meet that standard.

With these considerations and questions in mind, NHTSA summarizes the methodology used to assess the petitioners' maximum feasible average fuel economy levels, and the information submitted by petitioners to assist in that assessment, below.

b. Methodology Used To Assess Maximum Feasible Average Fuel Economy Level for Petitioners

As an initial matter, all manufacturers considered in this proposed decision met the threshold statutory requirements for eligibility; that is, all manufacturers manufactured or will manufacture fewer than 10,000 vehicles in the applicable model years. Some petitions for some model years were submitted late, although the late filings were accompanied with good cause claims, per 49 CFR part 525.[23] Regardless of the sufficiency of those good cause claims, NHTSA believes that due to the significant lateness of the agency's response to these specific exemption requests, it would be inequitable at this point to deny the late petitions on grounds of untimeliness. Moving forward, NHTSA expects manufacturers to remain cognizant of the requirement that each submission must be submitted not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown. While each good cause claim is evaluated on an individual basis, NHTSA encourages manufacturers to contact the agency as early as possible if they begin to expect a petition for exemption may be delayed. Once a manufacturer is aware of its obligations regarding petitions for exemption from CAFE standards, arguing that a company is ''busy simply trying to survive as a small manufacturer'' is not enough to show good cause for late submission of an exemption petition.[24]

When proposing maximum feasible average fuel economy levels, NHTSA must consider four factors: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. The agency's consideration of these factors in relation to low volume manufacturers differs from how the agency considers these factors for full-line manufacturers; the consideration of these factors as applied to past model years as compared to future model years necessarily differs as well.

''Technological feasibility'' refers to whether a particular method of improving fuel economy can be available for commercial application in the model year for which a standard is being established. Historically, for both low volume and full-line manufacturers, NHTSA has looked at manufacturers' use of fuel-economy improving technologies for weight reduction and aerodynamic improvements, engine improvements, and transmission improvements, among other technologies. Moving forward, NHTSA is also considering another category of technologies, off-cycle and air conditioning (A/C) efficiency improvement technologies. These technologies provide fuel economy improvements in real-world operation, but that improvement cannot be adequately captured by the 2-cycle test procedures used to demonstrate compliance with fuel economy standards. These off-cycle and A/C efficiency improvement technologies fall within the scope of technologies that manufacturers must discuss in their petitions to the agency,[25] and the manufacturer should include any anticipated benefit from those off-cycle and A/C efficiency improvement technologies in the projected fuel economy value for each vehicle configuration as required by 49 CFR 525.7(f).

Next, NHTSA considers ''economic practicability'' for petitions filed under 49 CFR part 525 as meaning the financial capability of the manufacturer to improve its average fuel economy by making technologically feasible changes to its passenger automobiles for the model years under consideration.[26] Technological feasibility and economic practicability are often conflated; whether a fuel-economy-improving technology does or will exist (technological feasibility) is a different question from what economic consequences could ensue if NHTSA effectively requires a low volume manufacturer utilize that technology, and the economic consequences of the absence of consumer demand for low volume vehicles utilizing that technology (economic practicability).

[22] *See* 41 FR 53827, 53828 (Dec. 9, 1976); 54 FR 40690 (October 3, 1989). *See also* 49 U.S.C. 32902(a), 81 FR 95491 (Dec. 28, 2016). EPCA/EISA requires that when NHTSA amends a generally applicable fuel economy standard to make it more stringent, that new standard must be promulgated ''[a]t least 18 months before the beginning of each model year.'' This is because Congress recognized the importance of notice to vehicle manufacturers to allow them the lead time necessary to adjust their product plans, designs, and compliance plans to address changes in fuel economy standards.

[23] 49 CFR 525.6 (''Each petition filed under this part must . . . Be submitted not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.'').

[24] 56 FR 3517 (Jan. 30, 1991).

[25] 49 CFR 525.7(h)(1).

[26] *See, e.g.,* 42 FR 33533 (June 30, 1977).

As part of economic practicability, NHTSA has historically considered only those technology improvements that would be compatible with the basic design concepts of the low volume manufacturers' vehicles. For example, for vehicles exclusively designed to be used for transporting the wheelchair bound or other mobility-impaired individuals, NHTSA did not consider design changes that would impair the ability of the vehicle to perform that function; [27] for a five-passenger luxury car, NHTSA did not consider ''design changes that would make the cars unsuitable for five adult passengers with luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows;'' [28] and for ''exotic high performance cars, design changes that would remove items traditionally offered on these cars, such as reducing the displacement of their engines, were not considered.'' [29] This is because ''[s]uch changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.'' [30] Market demand has been part of economic practicability considerations for decades, both in the industry-wide and low-volume CAFE programs.[31]

Between different types of low volume manufacturers, different technologies may or may not be available for commercial application for certain types of vehicles because of supply chain considerations and economies of scale. NHTSA has previously recognized that low volume manufacturers lag in having the latest developments in fuel-economy-improving technology because suppliers generally provide components to small manufacturers only after supplying large manufacturers.[32] Similarly, full-line manufacturers that provide engines and transmissions to small volume manufacturers may only do so after developing those parts for use in their own vehicles. In fact, as discussed below, some manufacturers requesting alternative standards rely on full-line manufacturers to provide customized engines for their vehicles.

That said, some of the vehicles covered by this proposed decision employ some of the most advanced fuel-economy-improving technologies available in the market today, but to improve other vehicle attributes. For example, as mentioned below, NHTSA generally considers turbochargers to be an effective technology to improve vehicle fuel economy; however, a high-performance sports car manufacturer may use turbochargers to increase vehicle power. Under NHTSA's historical interpretation of economic practicability for low volume manufacturers, a low volume manufacturer would justify in its petition to the agency whether it could direct some performance improvement towards fuel economy, and if not, why not. This requirement is echoed in NHTSA's regulations governing petition information: petitioners must include a discussion of the technological means selected by the petitioner for improving the average fuel economy of its vehicles and a discussion of the alternative and additional means considered but not selected that would have enabled its vehicles to achieve a higher average fuel economy than it did.[33]

Economic practicability can also encompass considerations like the manufacturer's ability to refresh and redesign their vehicles based on the availability of technology, as discussed above, or other factors. Manufacturers use diverse strategies with respect to when, and how often, they update vehicle designs. While most vehicles have been redesigned sometime in the last five years, many vehicles have not.[34] For low volume manufacturers, that time frame can potentially be even longer given the nature of their products. Vehicles with lower annual sales volumes tend to be redesigned less frequently, giving manufacturers more time to amortize the investment needed to bring the product to market. To the extent that a manufacturer includes these economic practicability concerns in their petition for exemption, NHTSA considers this alongside the evaluation of potential technological improvements.

NHTSA also considers a low volume manufacturer's ability to improve fuel economy by changing the mix of vehicle models it sells. Where a low volume manufacturer only produces one vehicle model, there is no change that they can make to their fleet sales mix to achieve a higher fleet average fuel economy level. Where a manufacturer only produces a handful of vehicle models, there may be slightly more opportunity; [35] however, a manufacturer's ability to change its fleet mix may also be a component of its sales strategy, and a limitation of producing such a niche product. Where ''producing additional models or making some of the configurations significantly more fuel efficient is not possible since both corporate financial limitations and the unique market sector served by [the low volume manufacturer] preclude significant changes to the basic concept of'' the low volume manufacturers' vehicles, NHTSA has not previously required those types of changes.[36]

Finally, it is important to note that NHTSA has historically taken the position that its evaluation of economic practicability does not consider the ability of the low volume manufacturer to absorb any potential civil penalties.[37] This is because if NHTSA considers the ability to pay a civil penalty as part of economic practicability for an individual manufacturer, the resulting standard may be higher than the highest fuel economy level that the manufacturer could achieve. Considering the ability of a manufacturer to pay civil penalties would also not conserve any fuel, which would not appear to support EPCA's underlying purpose of energy conservation and would simply represent a transfer of money from the manufacturer to the U.S. Treasury. This is separate from EPCA/EISA's statutory prohibition on the consideration of

[27] 60 FR 31937 (June 19, 1995).

[28] 58 FR 41229 (Aug. 3, 1993).

[29] 61 FR 39429 (July 29, 1996).

[30] *See, e.g.,* 54 FR 37444 (Sep. 8, 1989); 58 FR 41229 (Aug. 3, 1993), 60 FR 31937 (June 19, 1995); 63 FR 5774 (Feb. 4, 1998).

[31] *See Center for Auto Safety* v. *NHTSA* (*CAS*), 793 F.2d 1322 (D.C. Cir. 1986) (Administrator's consideration of market demand as component of economic practicability found to be reasonable); *Public Citizen* v. *NHTSA,* 848 F.2d 256 (Congress established broad guidelines in the fuel economy statute; agency's decision to set lower standards was a reasonable accommodation of conflicting policies). *See also* 58 FR 41229 (Aug. 3, 1993) (''Consumers need not purchase what they do not want.'').

[32] *See, e.g.,* 61 FR 39429 (July 29, 1996); 61 FR 67518 (December 23, 1996); 63 FR 5774 (February 4, 1998); 64 FR 73476 (December 30, 1999); 71 FR 49407 (August 23, 2006); 73 FR 34242 (June 17, 2008).

[33] 49 CFR 525.7(h).

[34] *See, e.g.,* 83 FR 43014 (Aug. 24, 2018) (Table II–3, Summary of Sales Weighted Average Time between Engineering Redesigns, by Manufacturer, by Vehicle Technology Class).

[35] Because CAFE standards apply to a manufacturer's fleet rather than to individual vehicles, it is possible for a manufacturer's fuel economy performance to fluctuate yearly based not only on changes in the fuel economy of each of its models, but also based on changes in the production volumes of those models. There may be situations in which a manufacturer makes no changes to the fuel economy of any of its models from one year to the next, but its fleet average decreases because of changes in the production volumes of the individual vehicle models it produces. This may occur even when a manufacturer makes improvements in the fuel economy of one or more individual vehicle models from one year to the next.

[36] *See* 58 FR 41228 (Aug. 3, 1993).

[37] *See, e.g.,* 44 FR 3710 (Jan. 18, 1979).

trading, transferring, or the availability of credits when setting maximum feasible standards,[38] which the agency believes is also relevant when setting alternative standards for a low volume manufacturer at the maximum feasible level.[39] In either case, NHTSA continues to believe that imposing an unavoidable additional cost on manufacturers (whether to pay the penalty, or, since the enactment of the credit trading program in EPCA/EISA, buy credits from another manufacturer) contravenes Congress' intent to establish maximum feasible standards for a manufacturer that the manufacturer can actually achieve.

Next, NHTSA interprets ''the need of the United States to conserve energy'' as ''the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for large quantities of petroleum, especially imported petroleum.'' [40] In determining the impact that establishing an alternative CAFE standard would have on the need of the United States to conserve energy, NHTSA has historically taken two approaches. Originally, if the agency determined the low volume manufacturer could not meet a higher fuel economy standard than they requested—because it was not technologically feasible or economically practicable for them to do so—NHTSA concluded that denying the exemption or setting a higher alternative standard would not lead to any fuel savings.[41] Similarly, if the manufacturer had already produced the vehicles for sale (in the case of a petition that was granted after the vehicles were built and sold), NHTSA concluded that denying the exemption or setting a higher alternative standard would not result in any fuel savings, and would relatedly have no effect on the need of the United States to conserve energy.[42] In later years the agency attempted to quantify the *de minimis* impact of granting low volume manufacturer exemption petitions for illustrative purposes, by estimating the amount of additional fuel consumed by the exempted fleet over its operating lifetime.[43]

Finally, in considering the impact of other standards of the Government on fuel economy, NHTSA has historically looked at the weight impact of its own safety standards, as well as the Environmental Protection Agency's (EPA) greenhouse gas (GHG) and criteria pollutant emissions standards. NHTSA is aware that some manufacturers included in this proposed decision have received a final determination from EPA on alternative GHG standards for past model years,[44] standards that are on average less stringent than EPA's large manufacturer standards, and invites comment on any new information on the impact of EPA's GHG standards on the manufacturer's ability to meet an alternative fuel economy standard that the agency should consider.

The following section discusses technological feasibility and economic practicability individually for each manufacturer, as each manufacturer employs technology in a different manner to achieve different objectives. For some manufacturers that have several years of unanswered petitions, with several vehicle lines, the discussion of relevant information submitted in their petitions is necessarily longer than that of a manufacturer that produces only one vehicle type, or that only has outstanding petitions for a few model years. In addition, because low volume manufacturers can petition for alternative standards for periods of three model years at a time,[45] some petitions docketed in support of this notice also include requests for alternative standards for MYs through 2024. Outstanding MY 2024 requests will be addressed in a subsequent notice.

Note also, low volume manufacturers generally submit two copies of their petition to NHTSA, one with confidential business information (CBI), and one without. CBI includes information like projected sales volumes for each vehicle, planned future technology application, and future vehicle models. The information presented below is taken from the non-CBI materials because even though some model years have passed (and some MY-specific information like actual production volumes ceases to be CBI after the model year has passed and that information becomes knowable), information may still be pertinent to future product plans or confidential sales strategy may have remained the same over time.

To assess the impact of setting alternative standards at the levels proposed herein on the need of United States to conserve energy, NHTSA presents the calculations for all manufacturers together and separately by manufacturer. Similarly, the assessment of the effect of other standards of the Government on fuel economy is presented in a single section for all manufacturers.

i. Technological Feasibility and Economic Practicability

NHTSA's regulations at 49 CFR 525.7 request that low volume manufacturers submit several pieces of information to assist NHTSA in assessing technologically feasible and economically practicable improvements for the manufacturer's fleet. This information includes a description of the technological means selected by the manufacturer for improving the average fuel economy of its automobiles to be manufactured in a model year, a chronological description of the manufacturer's past and planned efforts to implement the fuel-economy-improving technology in its fleet, a discussion of the alternative and additional means considered but not selected by the manufacturer that would have enabled its passenger automobiles to achieve a higher average fuel economy than is achievable with the means it described, and in the case of a manufacturer that plans to increase the average fuel economy of its passenger automobiles to be manufactured in either of the two model years immediately following the first affected model year, an explanation of the reasons for not making those increases in the affected model year.

As discussed above, the technologies manufacturers generally discuss in these exemption petitions include technologies for weight reduction and aerodynamic improvements, engine improvements, and transmission improvements. Manufacturers have also started using off-cycle and air conditioning (A/C) efficiency improvement technologies, which fall within the scope of technologies that manufacturers should discuss in their petitions to the agency if a manufacturer plans to apply those technologies in an affected MY.

[38] 49 U.S.C. 32902(h).

[39] While 49 U.S.C. 32902(h) does not point directly to the exemption provision at 49 U.S.C. 32902(d), it does point to 49 U.S.C. 32902(f), which outlines the factors that NHTSA must consider when ''deciding maximum feasible average fuel economy.'' NHTSA believes that when the agency carries out the directive in 49 U.S.C. 32902(d)—to prescribe by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the *maximum feasible average fuel economy level* for the manufacturers to which the alternative standard applies—just as considering the manufacturer's ability to pay civil penalties would result in a higher standard than the manufacturer could actually achieve, forcing the manufacturer to buy credits would also result in a higher standard than the manufacturer could actually achieve.

[40] 42 FR 63184, 63188 (Dec. 15, 1977).

[41] *See, e.g.,* 60 FR 31937 (June 19, 1995).

[42] *See, e.g.,* 54 FR 40689 (Oct. 3, 1989).

[43] *See, e.g.,* 61 FR 46756 (Sep. 5, 1996); 71 FR 49407 (Aug. 23, 2006).

[44] 84 FR 37277 (July 31, 2019); 85 FR 39561 (July 1, 2020).

[45] 49 CFR 525.9.

(a) Aston Martin Lagonda Limited (AML) MY 2008–2023 Vehicles

Aston Martin Lagonda Limited (AML) is a sports car manufacturer whose product portfolio for the model years covered by this proposed decision include the DB9, DBS, DB11, Vantage, Virage, Rapide, and Vanquish, among others, in multiple engine and body configurations.

For all model years covered by AML's petitions for alternative standards, AML only sold vehicles with V8 or V12 engines. With respect to ongoing engine improvements, AML stated that for MYs 2018 and later it is downsizing the V12 6.0-liter engine to 5.2 liters, resulting in reduced fuel use. Other engine technologies for the V12 engine that AML stated support a reduction in fuel use include turbocharging, reduced exhaust backpressure, stop-start, cylinder deactivation, electric thermostat with coolant flow management, and electric/hydraulic power steering. For the models that use the new 4.0-liter V8 turbocharged engine, like the new DB11 V8 and Vantage models, AML stated that similar technology additions helped to realize an additional fuel economy improvement.

Starting with MY 2014, AML employed Bosch engine management systems (EMS) to realize fuel consumption improvements and CO_2 emissions reduction through use of other technology enablers such as start-stop, but due to the small size of the company the application of additional technologies will be over an extended period. According to AML's MY 2021 petition in June 2018, all vehicle models included the Bosch EMS. AML stated that the company is also investigating powerunit sourcing opportunities to increase vehicle efficiency, although there are very long lead time changes due to contractual agreements with suppliers and vehicle architecture modification requirements.

Since MY 2008, AML's transmissions incorporate six-, seven-, or eight-speed technologies, and the seven-speed transmission incorporates a lightweight, low friction design. Starting in 2014, AML began replacing the previously-used 6-speed ZF automatic transmission with an 8-speed ZF transmission in its vehicles with V12 engines. Per AML, the DB11 uses an enhanced version of the 8-speed ZF transmission coupled to a low loss higher ratio final drive to enable further downspeeding of the V12 engine, thereby enhancing its fuel economy capability. Future AML models will also use this 8-speed transmission.

Each of AML's vehicles possesses a body and chassis configuration that is small, aerodynamic,[46] and that makes extensive use of advanced lightweight materials. All major body and mechanical components of the Virage, DB9, DB11, and Vanquish models are either aluminum, magnesium alloy, or advanced lightweight composite materials, resulting in vehicles that are up to 600kg lighter than comparable in the same class of vehicles.[47]

In the late 2000s/early 2010s, AML considered using partial hydraulic/electric or full electric power assist steering (EPAS) technology that could improve fuel economy, however, it was rejected because of the scale of development needed for introduction. As mentioned above, AML's more recent vehicles include this technology. Similarly, in the early 2010s, AML considered using low friction lubricants in the V8 engines but rejected them on the basis that 10W60 oil provided the oil-film thickness retention needed to protect the lead-free main bearings at elevated engine speeds. Since that time, with the introduction of the 5.2 liter V12 engine, AML has improved engine friction by adopting advanced engine oil lubrication and is continuously investigating use of other oil formulations for the future.

AML noted in its petitions that its vehicles share underlying platforms and technologies, which impacts how fuel-economy improving technologies can be applied throughout its fleet. For example, AML introduced the ZF 8 speed automatic transmission in MY 2015 following four years of development to replace all 6-speed transmissions on V12 models apart from the DB9. AML stated that this lead time was principally driven by the need for new tooled parts and a heavily revised engine and gearbox calibration.

Next, AML stated that it is not able to manipulate its model mix. AML produces only one ''type'' of car, specifically what it characterizes as high performance/limited production. These vehicles all have what AML refers to as multi-cylinder large capacity power units, and in fact for model years that have already passed, AML has only sold vehicles with V8 or V12 power units in the U.S. market. In early petitions, AML projected that vehicles with the (relatively) more fuel efficient V8 engines would exceed sales of vehicles with the V12 engines, however, that did not happen. AML observed that the V8 and V12 vehicles appeal to different market segments and attempting to force more sales of vehicles with V8 engines was not feasible. Accordingly, when sales of the V8 models declined relative to projections, as compared to the V12 model, AML's achieved CAFE level was negatively affected. Over the model years that NHTSA considered in this proposed decision, AML projected that the balance of vehicle sales with V8 and V12 engines would vary in different model years.

AML also stated that the company is limited to making technology improvements that are compatible with the basic design concept of its vehicles, *i.e.,* high performance vehicles. AML stated in its petitions that it has taken all possible steps to maximize fuel economy within its existing vehicle range, with recent changes to engine, engine management, and transmission technology, that has resulted in incrementally improving fleet fuel economy. AML also stated that its lightweight and aerodynamic vehicle designs have shown that it has done as much as possible to improve its vehicles' fuel economy.

(b) Ferrari MY 2016–2018 and 2020 Vehicles

Ferrari N.V. (Ferrari) is a small volume manufacturer of sports cars. Ferrari's product portfolio for the model years covered by this proposed decision includes GT cars (*e.g.,* the GTC4Lusso and California T) and sports cars (like the F12 Berlinetta and LaFerrari, and 488 Spider and 488 GTB) with a mix of V8 and V12 engines, in addition to its portfolio of limited series supercars, which include the LaFerrari Aperta, the F60 America, the F12tdf, GTC4LussoT, and 812 Superfast.

With respect to powertrain technologies, Ferrari stated that it was developing new gasoline direct injection technology to target tailpipe emissions, in addition to a new turbocharged, downsized, and down-speeded V8 engine family. Ferrari also stated that it is investigating engines with higher BMEP levels to improve thermal efficiency from better combustion, with

[46] The reported aerodynamic drag coefficients for AML vehicles range from 0.33–0.34 for the early 2010s DB9, Virage, and Vantage models, to 0.37 for the MY 2020 DB11. Although current mass market vehicles have now achieved similar aerodynamic drag coefficients, for high performance vehicles desirable downforce to prevent rear end lift at high speeds and sufficient powertrain cooling needs limit further reductions.

[47] Likewise, AML stated the company has extensively used carbon fiber composite material in the vehicles' body panels. All AML models incorporate an all-alloy underbody structure that contributes only minimal weight, in addition to the bonnet and roof that are constructed from a lightweight alloy, while the front fenders, tailgate, and sills are produced from advanced composites. Aside from the vehicle body, the engine block design also decreases weight with use of aluminum material for components that are not loading points.

electric boosting to reduce turbo lag. Ferrari provided specific technology information on its MY 2015 California T grand tourer, showing that with the addition of a downsized engine and two turbochargers, the vehicle achieved an improved fuel economy value of 18.7% over the previous model while still meeting its performance objectives. The MY 2014 V12 Limited Edition LaFerrari utilized a hybrid powertrain with a 120kW electric motor and an ultra-lightweight composite body to achieve a fuel economy of 17.6 mpg.

Ferrari stated that the mix of vehicles it sells strongly affects its fleet average fuel economy, though substantial fuel economy improvements can be seen in each category of vehicles. In evaluating new vehicle technologies, Ferrari stated that it must consider maintaining the higher performance and unique driving experience of its vehicles, customer acceptance, and the impact on overall vehicle design. Additionally, manufacturing constraints may affect which new technologies Ferrari can adopt on its vehicles; Ferrari noted that moving from internal R&D to production vehicles is dependent on suppliers, and obtaining components from suppliers is more difficult for Ferrari than for larger companies, especially given the low volume of vehicles produced and the unique nature of the vehicles' design. The low volume of components required by the company may cause delays or project cancellations due to the inability of suppliers to produce components in a desired timeframe. Additionally, Ferrari stated that it had not had any assistance regarding vehicle components from Fiat or Fiat Chrysler when it was still associated with those organizations.

Ferrari stated that even with a limited model mix and the need to provide customers with superior performance, handling, and luxury, the company targeted a fuel economy improvement of 17.4% for its fleet average fuel economy for MY 2018 as compared to MY 2014. Ferrari stated that it planned to improve its fleet fuel economy in each of the model years covered by its petitions.

Ferrari also initially requested an exemption for its MY 2019 vehicles, but subsequently notified NHTSA that it produced more than 10,000 passenger automobiles globally in 2019 and therefore was not eligible for small volume manufacturer status. Accordingly, NHTSA did not consider Ferrari's original MY 2019 request in this notice.

However, Ferrari has requested an exemption for its MY 2020 vehicles, expecting sales to be below the 10,000 passenger automobiles globally. The drop in sales is anticipated due to the effects of the COVID–19 public health emergency.

(c) Koenigsegg Automotive AB MY 2015, 2018–2023 Vehicles

Koenigsegg Automotive AB (Koenigsegg) is a low volume manufacturer of high-performance vehicles. For the model years covered by this proposed decision, Koenigsegg produced the Agera model for 2015 and 2018, the Regera model for 2019–2021, the Jesko model for 2022–2023, and the Gemera model for 2023.

Koenigsegg vehicles use smaller displacement engines than many other specialty manufacturers; the company stated that where other similarly situated manufacturers often use 6 liters or larger displacement 10- or 12-cylinder engines, the Koenigsegg engine is a relatively small 5-liter V8 engine that utilizes twin turbochargers to facilitate vehicle performance. Koenigsegg also uses lightweight materials to build its vehicles; carbon fiber is used not only for the body panels, but for structural parts as well. Additionally, starting with MY 2019, the company offers only a hybrid drivetrain, consisting of a conventional combustion engine and three electric motors. That hybrid drivetrain was not introduced onto MY 2015 and MY 2018 vehicles because of budget and staff limitations.

Koenigsegg stated that it was not possible to improve its fuel economy level in MYs 2015 and 2018–2021 by shifting its fleet mix because the company only offered one vehicle configuration. Additionally, for model years 2022 and 2023, the vehicle footprints are increasing in size for the new vehicle models. Koenigsegg stated that its budget for research and development into fuel economy improving technologies is limited because of its small size. Other economic practicability concerns relevant to this proposed decision include Koenigsegg's statement that an obligation to meet higher CAFE standards than requested would ''jeopardize [its] position as a world class leader of hyper cars.''

(d) McLaren Automotive MY 2012–2023 Vehicles

McLaren Automotive is a small volume manufacturer of high-performance vehicles. The vehicles covered by McLaren's petitions include the MP4–12C, P1, 570S/570GT, and 720S, among others.

McLaren's independently-developed vehicle models began in 2011 with the McLaren MP4–12C, which utilized McLaren's independently-developed engine, the M838T. The M838T is a 3.8 liter downsized, turbocharged 8-cylinder engine that employs technologies including variable valve timing to optimize engine efficiency, secondary air injection, and electronically controlled twin thermostats. The engine also uses Nikasil-coated aluminum liners for further weight reduction. McLaren stated the valve timing on the M838T has been calibrated for best fuel economy under typical road driving speeds and loads, within the limitations of acceptable combustion stability. From optimizing the M838T prototype engine to pre-production engine valve timing, McLaren realized a 4–5% specific fuel consumption reduction. The M838T also uses friction reduction technology including reduced diameter bearing journals, the Nikasil-coated cylinder liners mentioned above, low friction piston skirt coating, superfinished finger followers, and coated valves in the valvetrain. The piston ring pack has been developed to meet oil consumption targets with minimum ring tension, and the use of a dry sump system, allows reduced churning losses in the crankcase. McLaren uses synthetic Mobil 0W/40 oil in its vehicles, and stated that the advantages to moving to bespoke oil for its vehicles is limited; however, McLaren stated that it is investigating other advanced engine oil formulations.

McLaren's P1 vehicle is powered by an upgraded version of its M838T powertrain in parallel with an electric motor, and the vehicle can operate in either hybrid or electric-only mode. The motor also allows for energy recovery through regenerative braking. Accordingly, the P1 has achieved an increase in fuel economy over the previous vehicle, the MP4–12C, while also increasing power.

The M838T engine is coupled to a 7-speed dual clutch transmission, which McLaren refers to as its ''Seamless Shift'' dual clutch gearbox (SSG), and which the company designed to respond to demand for a ''mechanical package that resulted in not only reduced weight and dynamic control for the entire vehicle, but also improved fuel consumption and CO_2 emissions.'' McLaren stated that the gear ratios have been optimized for acceptable vehicle performance while maximizing fuel economy,[48] and in the transmission's base mode, ''auto normal,'' the shift

[48] Additionally, McLaren stated that the maximum speed of the MP4–12C is achieved in 6th gear, leaving 7th gear as a true ''overdrive'' gear intended for maximum fuel efficiency.

points are optimized to provide maximum powertrain efficiency and fuel economy.[49] McLaren has explored transmission loss reductions, using hardware to significantly improve losses from the first prototype transmission and final validation prototypes. A wide default park position for the shift clutches also allows for reduced friction levels, reduced cooling flow to the clutches, contributing to efficiency at idle. Because there is some performance trade-off for this park position, the vehicle uses an adaptive strategy to detect when a higher performance level is required, returning to the low friction park position once the high-performance demand has subsided. McLaren also stated that the transmission lubricants have been optimized to provide the best compromise between fuel economy and transmission life/service intervals.

All of McLaren's vehicles utilize a lightweight carbon fiber chassis that McLaren has termed the Carbon MonoCell, with the 12C MonoCell weighing less than 175 pounds. Other mass reduction opportunities that McLaren has implemented include brakes with forged aluminum hubs, reduced exhaust path length, airflow-assisted airbrake deployment, reduced wheel weight, rear-mounted engine cooling radiators to minimize pipework and the fluid contained within, a downsized engine coupled to a lightweight transmission, halogen-free compressed wiring, and a Li-ion battery.

For aerodynamic improvements, McLaren has increased the MP4–12C down force while achieving a reduction in the coefficient of drag relative to the Mercedes SLR McLaren. Techniques used to achieve this reduction include a more efficient vehicle shape, careful control of vehicle cooling air, and extensive use of under floor guide vanes to control wheel wakes while producing downforce with little or no drag penalties.

Other commonly employed vehicle technologies that McLaren has utilized to reduce parasitic losses include an electrically powered hydraulic steering system, which provides fuel efficiency improvements over a conventional engine-driven hydraulic pump by removing the need to continually drive the pump when the pressure is not required. McLaren has also made electric load improvements by using high efficiency lamps and series/parallel fan control.

With respect to economic practicability, McLaren noted that it invested significantly in the M838T engine, and as a low volume manufacturer with relatively low sales volumes, a return on investment must come from carefully considered platform engineering and an extended lifecycle for the base powertrain. The projected trend for McLaren's market sector is continued increases in rated power; the company predicted that a sustained reduction in CO_2 (and accordingly, an increase in fuel economy) would be challenging. McLaren stated that the company continues to conduct powertrain research and development to support future emissions and CO_2 reductions. However, McLaren stated that currently, there are no other further fuel economy improvements that the company can adopt that are compatible with the basic design concept of its high-performance sports cars. Similarly, McLaren stated that the company has no opportunity to improve fuel economy by changing its model mix because all of its vehicles share a common platform, all using variants of the same power plant.

As for future fuel economy improvements, McLaren stated that moving forward, they have planned a range of other models that will allow the company to introduce new, innovative technologies designed to improve efficiency even further. McLaren in 2016 stated that the company planned to implement hybrid technology on 50% of its fleet by 2022, with a quarter of planned investment revenue slated for research and development of new technologies. In 2020, McLaren stated that the company would implement hybrid technology on 100% of its Sports Series and Super Series vehicles by 2025.

(e) Mobility Ventures MY 2014–2016 MV1

Mobility Ventures is a wholly-owned subsidiary of AM General LLC (''AM General''). AM General is a private company headquartered in South Bend, Indiana. AM General produces light tactical vehicles for the military as well as commercial vehicles, both as an original equipment manufacturer (OEM) and as a contract manufacturer.[50]

Prior to forming Mobility Ventures in late 2013, AM General contracted with the now-defunct Vehicle Production Group LLC (''VPG'') to assemble their MV–1 vehicle at AM General's Commercial Assembly Plant in Mishawaka, Indiana. The MV–1 is a vehicle specifically engineered from the ground up to address the unique requirements and limitations of wheelchair users and other people with disabilities. Production of the VPG MV–1 began in 2011 and ended in February 2013 when VPG ceased operations. In September 2013, AM General acquired the assets of VPG and formed Mobility Ventures to assume engineering, production, and distribution of the MV–1. Production of the MV–1 resumed under the Mobility Ventures brand in March 2014. Production of the MV–1 ceased in late 2015, with MY 2016 being the final model year.

In its petition, Mobility Ventures listed and described several fuel-saving technologies that it applied to its vehicles for MYs 2014–2016 including engine and transmission technologies. Mobility Ventures noted that, ''after acquiring the assets of VPG in 2013, Mobility Ventures put the MV–1 into production without modifying the vehicle from VPG's 2012 model year configuration,'' due to time constraints. For MY 2014, Mobility Ventures offered a compressed natural gas (CNG) variant of the 4.6L V8 engine which achieved a fuel economy value of 114.7 mpg, substantially higher than the 18.4 mpg achieved by the gasoline-powered variant. Starting with MY 2015, Mobility Ventures retired the 4.6L V8 engine in favor of a more efficient 3.7L V6 engine. Also for MY 2015, Mobility Ventures replaced the 4-speed transmission with a more efficient 6-speed transmission. Implementation of this downsized engine and more advanced transmission resulted in a 9.8% increase in fuel economy for the MY 2015 MV–1 as compared to the gasoline-powered MY 2014 MV–1. The MV–1 retained the MY 2015 configuration for MY 2016.

Mobility Ventures did not consider any changes for the MY 2014 MV–1 since it elected to resume MV–1 production without delay following its acquisition of VPG in late 2013. Mobility Ventures planned to offer a

[49] McLaren stated that the company has conducted extensive development work to ensure that the default shift schedule has been optimized to ensure the best possible fuel economy: ''The high levels of torque available at low engine speeds have been exploited to improve fuel economy. The engine idle speed has been reduced to 600rpm to minimise the fuel consumption when in this condition. If a very high level of performance is requested by the driver, the shift schedule will adapt to this request before returning to the low engine speed, maximum fuel economy schedule, once the driver demand is reduced to lighter load driving. This adaption will be completed after just 20 seconds of light load driving. If the driver is holding a constant speed around 50kph/30mph then this will trigger a shortcut and the adaption will be complete within just 4 seconds.''

[50] Vehicles manufactured and certified by AM General in the past, such as the road-legal variant of the Hummer, were likely not passenger automobiles or non-passenger automobiles subject to the CAFE program, and thus would not have needed to apply for exemption from CAFE standards.

CNG version of the MV–1 for MY 2015. However, CNG calibration issues arose in transitioning to the more fuel efficient 3.7L V6 engine. Mobility Ventures considered technical solutions proposed by the fuel injector manufacturer but could not justify the substantial added cost given the weak demand for the CNG version of the vehicle.

(f) Pagani Automobili S.p.A MY 2014 and 2016–2023 Vehicles

Pagani Automobili S.p.A. (Pagani), formerly Modena Design S.p.A., is an Italian corporation formed in 1991 and owned by the Pagani family. Pagani began manufacturing Pagani-brand sports cars in 1999, first producing the Zonda, then Huayra,[51] both in very low volumes. For the model years covered by Pagani's petitions, the company's product portfolio includes the Huayra (C9), Huayra BC (C9N), and Huayra Roadster (C9R). The company estimated that it had a total production capacity of no more than 50 vehicles per year, with approximately 20 of those vehicles built to U.S. specifications.

Pagani's first vehicle, the Zonda, was a high-performance sports car powered by a Mercedes-Benz 12-cylinder engine. The Huayra, the vehicle replacing the Zonda, received a new engine, the M158 engine, which was more powerful than the previous engine but also smaller, further reducing weight and increasing efficiency. Pagani stated in its MY 2015–2017 petition that the M158 engine was homologated to meet the strictest environmental regulations, which at that time were EU5 and LEV2. Additionally, despite the increase in power compared to other Mercedes-AMG V12 engines developed for Pagani, the engine has reduced CO_2 emissions and fuel consumption, ''to make the Pagani Huayra class leading amongst 12 cylinder sports cars with values that are respective of much smaller vehicles in the market.'' Pagani's MY 2018–2020 petition also stated that a new developed engine is expected for introduction in MY 2018.

Pagani stated in its MY 2012–2014 petition that the Huayra makes extensive use of lightweight materials, including carbon fiber in the chassis and panels, and chromoly steel space frames. Pagani stated in its MY 2015–2017 petition that the central monocoque on the Huayra had been updated to an entirely new design made from carbontitanium, and structural and non-structural weight reduction strategies like integrating all ventilation air ducts into the monocoque's structure contributed to the vehicle's weight of 1,350 kg (2976.24 lbs), making the Huayra ''the lightest sports car in its class.'' Pagani stated that the Huayra design optimizes aerodynamics to achieve a coefficient of drag value of 0.35, which also allows for greater efficiency. Finally, the Huayra employs low rolling resistance Pirelli P Zero tires to reduce CO_2 emissions and fuel consumption.

Pagani stated that the unique nature of the company's product line does not lend itself to high fuel economy values, and accordingly there are no additional fuel economy improvements that it could adopt that are compatible with the basic design concept of a traditional sports car. Similarly, Pagani stated that it cannot improve its fuel economy by changing its model mix because it only sells one vehicle model in the United States, which uses the Mercedes-Benz engine. Because Pagani does not produce its own engine, the company stated that it is constrained in making additional improvements to the vehicle powertrain. Beyond the technologies described above, Pagani stated that there are no further fuel economy improvements for the company to adopt that are compatible with the basic design concept of its vehicles.

(g) Spyker Automobielen B.V. MY 2008–2010 Vehicles

Spyker Automobiles produces limited-production sports cars, built to individual order.[52] The vehicles covered by Spyker's MY 2008–2010 petition include different variants of its C8 vehicle.[53]

Spyker's vehicle uses a LEV V8 powertrain from the Audi A8 coupled with a Bosch ME–7 engine management system. Spyker stated that this 4.2 L Audi V8 engine is the most advanced engine available to a small vehicle manufacturer seeking an engine from an outside source. Spyker stated that its vehicles are both lightweight and aerodynamic; the chassis is made of aluminum and the vehicle in total weighs in at 1346 kg (2967 pounds). The coefficient of drag of the vehicle is 0.41 with the roof off, and 0.38 with the roof on.

Spyker stated that the high-performance nature of its product line generally does not lend itself to high fuel economy values, and the company is not able to manipulate model mix because the company was created to sell limited numbers of high-performance automobiles. Accordingly, Spyker stated that there is no room for CAFE changes based on marketing actions. Spyker also stated that it has no opportunity to improve fuel economy by changing its model mix because it would only export three high performance models to the United States in MYs 2008–2010, all using the Audi V8 or V12 engines. Spyker also stated the company had invested millions of dollars (at the time of the MY 2008–2010 petition) in design, development, homologation, and the start of production, and the company is financially constrained in making additional fuel economy improvements because of the large investment in start-up and producing new models. In sum, Spyker stated that producing more fuel-efficient models or making existing configurations significantly more fuel efficient is not possible.

ii. The Need of the United States To Conserve Energy

Many of the manufacturers considered in this notice noted that they were not unmindful of energy issues facing the United States today, including both energy conservation and climate change. Several manufacturers noted however, that the extremely low sales volumes of their vehicles, coupled with the fact that, in the case of many high-performance sports cars, they are ''almost exclusively used as a second or third car (and hence infrequently),'' [54] meant that these vehicles had a ''virtually immeasurable'' effect on U.S. energy consumption.[55] As discussed further below, some manufacturers also submitted additional data estimates on how many miles their vehicles are driven per year, or estimates of how much fuel their fleet of vehicles is estimated to consume over time, and the agency confirmed these estimates with an independent evaluation of vehicle miles travelled (VMT) data performed for this notice.

As mentioned above, when independently evaluating the impact that establishing an alternative CAFE

[51] The corresponding model numbers for vehicles covered by this petition are C8 and C9. As of the date that Pagani submitted its MY 2012–2014 petition, the C9 had not yet been named Huayra.

[52] At the time that the entity that produced Spyker vehicles petitioned NHTSA for alternative standards, that entity was Spyker Automobielen B.V. That entity is now Spyker N.V., however it does not seem that Spyker has produced vehicles for sale in the U.S. market from the time of the 2008–2010 petition.

[53] At the time of its petition, Spyker was also planning to produce a Super Sport Utility Vehicle (SSUV) and mentioned that vehicle in their petition. However, 49 U.S.C. 32902(d) limits the applicability of an exemption to passenger automobiles produced by the manufacturer requesting the exemption.

[54] *See, e.g.,* McLaren CAFE Exemption Petition for MYs 2021–2023.

[55] *Id.*

standard would have on the need of the United States to conserve energy, NHTSA has historically taken two approaches. For several years, the agency categorically concluded that if it had already determined that it would not be technologically feasible or economically practicable for the low volume manufacturer to achieve a higher fuel economy standard than requested, denying the exemption or setting a higher alternative standard would not have had any effect on the need of the United States to conserve energy.[56] In later years the agency attempted to quantify that *de minimis* impact for illustrative purposes, by estimating the amount of additional fuel consumed by the exempted fleet over their operating lifetime.[57]

In brief, the estimated amount of additional fuel consumed by the exempted fleet over its operating lifetime is a function of the difference between the manufacturer's actual CAFE standard and their requested alternative standard multiplied by the manufacturer's estimated U.S. production volume, multiplied then by an estimate of the total miles these vehicles could travel as an active part of the fleet.[58] The resulting difference is then divided by the average number of gallons that the total U.S. automotive fleet uses.[59] The final value shows the fleet's additional gallons of fuel use as a percentage of total U.S. automotive fuel use.

Unique to the analysis for this proposed action is that for model years that have already passed, for which NHTSA has final verified fuel economy values from EPA or final data submitted to EPA by manufacturers, those values are used instead of the proposed alternative standard. In a majority of cases, the manufacturers achieved a higher fleet fuel economy value than they requested for a given model year.

Additionally, because projected U.S. production volumes for some fleets are still CBI at this time, or because NHTSA does not have final production data from EPA for some completed model years, NHTSA averaged each manufacturers' latest three years of verified production data to present estimates of potential future fuel use for those model years. NHTSA considered assuming that every manufacturer would produce the maximum 10,000 vehicles in MYs 2019 and later, or that each manufacturer would produce 5,000 vehicles in MYs 2019 and later, although these assumptions were not supported by historical data. NHTSA seeks comment on this approach, in addition to any alternative assumptions that the agency should employ in estimating the amount of additional fuel consumed by a fleet granted an alternative CAFE standard. Note again, these projections are only used to estimate the *potential* future fuel use of a manufacturer's fleet; a fleet's actual fuel use is dependent factors like an individual vehicle owner's driving patterns. As discussed below, many of the vehicles considered in this notice are driven infrequently, if at all.

For the quantitative estimate presented today, NHTSA also developed new assumptions about low volume vehicle lifetime mileage that more accurately captures how *some* low volume vehicles are driven.[60] For reference, the Federal Highway Administration's (FHWA) 2017 National Household Travel Survey (NHTS) best available estimate for average miles driven per vehicle is 11,128 miles per year for the category of vehicle that includes automobiles, cars, and station wagons.[61] NHTSA's new calculated yearly VMT for high performance vehicles is 2,543 miles per year. Note, as discussed below, that NHTSA used the FHWA's 2017 NHTS best available VMT estimate for cars for Mobility Ventures' fleet, as the agency does not believe that the driving patterns of mobility vehicles are accurately represented by the data used to calculate an average yearly VMT value for high performance vehicles. The agency seeks comment on this approach, in addition to any other data or information on the driving patterns and mileage schedules of vehicles used to transport wheelchair bound or otherwise mobility impaired individuals.

To estimate an average yearly VMT schedule for high performance vehicles, NHTSA consulted an IHS/Polk dataset that includes more than 74 million unique odometer readings across 16 model years (2000–2015). NHTSA used over 10,000 odometer readings from vehicles produced by Aston Martin, Ferrari, and McLaren from MY 2000 to MY 2014. Specifically, NHTSA used the average odometer reading for vehicles of each manufacturer, model, and model year, and the average age of the vehicle in calendar year 2014 (when the majority of odometer readings occurred). NHTSA then divided the average odometer reading by the average age for each vehicle to arrive at an estimate of average miles traveled per year of use. Averaging all the unique make, model, and model years for which there is data (approximately 200 unique combinations), resulted in an average usage of 2,543 miles per year.

Although this is a relatively small sample that only considers manufacturers for which there is readily-available data, it more closely tracks what low volume manufacturers (specifically in this case of what could be considered high performance vehicles) claim the impacts of their vehicles would be on overall fuel use. For example, AML's MY 2019 petition (and other manufacturers have shared similar sentiments) stated that their vehicles' impact on energy consumption is *de minimis,* ''not only because of the tiny volume of cars, but also because the vehicles tend to be used very infrequently (as a second or third car) and therefore have a very low VMT (vehicle miles travelled) value per annum.'' Similarly, Pagani stated that, in fact, ''[s]ome customers choose to not drive the cars at all and view the cars as investments to be stored for future sale. Most others will choose to drive the car sparingly as a weekend trophy car.'' More recently, in its MY 2022 petition, AML stated that ''AMLs current understanding is that VMT [for its vehicles] is in the order of 2500 miles per annum.''

We seek comment on this new approach, in addition to any other data or information on yearly VMT for vehicles that would generally qualify under NHTSA's low volume manufacturer provision. If commenters believe that a higher VMT assumption would be appropriate for making this calculation, it would be most helpful to the agency for commenters to provide specific data or citations underlying that belief, ideally data that could be made public. Additionally, as mentioned above, NHTSA did not believe that it was appropriate to use the calculated value for high performance vehicles for the Mobility Ventures fleet, as odometer

[56] *See, e.g.,* 54 FR 40689 (Oct. 3, 1989).

[57] *See, e.g.,* 61 FR 46756 (Sep. 5, 1996), 71 FR 49407 (Aug. 23, 2006).

[58] NHTSA estimated the lifetime miles for vehicle classes as part of the SAFE Final Rule analysis. *See* SAFE Final Rule ''paramters_ref.xlsx'' file, available for download at *https://www.nhtsa.gov/corporate-average-fuel-economy/compliance-and-effects-modeling-system.*

[59] U.S. Energy Information Administration Monthly Energy Review March 2020, Table 3.7c Petroleum Consumption: Transportation and Electric Power Sectors, available at *https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf.*

[60] Historically, low volume manufacturer petitions for exemption from CAFE standards have covered luxury vehicles, exotic high-performance vehicles, and vehicles exclusively designed to be used for transporting the wheelchair bound or other mobility-impaired individuals.

[61] *See* Developing a Best Estimate of Annual Vehicle Mileage for 2017 NHTS Vehicles, *available at https://nhts.ornl.gov/assets/2017BESTMILE_Documentation.pdf.*

readings from high performance sports cars would likely not be representative of the average usage of mobility vehicles. NHTSA seeks comment on any data or information that would help to inform the agency's yearly VMT schedule for these vehicles.

NHTSA estimates that the additional fuel consumed by the LVM fleets at the proposed alternative standards level is as follows:

TABLE 1—ESTIMATED ADDITIONAL LIFETIME FUEL CONSUMPTION

Manufacturer	Additional lifetime fuel consumption (gallons)	Percentage of total U.S. motor vehicle fuel consumption over lifetime [62] (%)
Aston Martin MY 2008–2023	17,752,742	0.000838
Ferrari MY 2016–2018 and 2020	7,668,471	0.000362
Koenigsegg MY 2015, 2018–2023	58,029	0.00000274
McLaren MY 2012–2023	7,845,563	0.000370
Mobility Ventures MY 2014–2016	6,186,748	0.000292
Pagani MY 2014, 2016–2023	200,428	0.00000946
Spyker MY 2008–2010	57,469	0.000002712
Total	39,769,449	0. 001877

iii. The Effect of Other Standards of the Federal Government on Fuel Economy

NHTSA has determined that ''other motor vehicle standards of the Government'' that affect fuel economy include its own safety standards as well as EPA's emissions standards, which include criteria pollutant and now greenhouse gas ((GHG), which include CO_2, N_2O, CH_4, and hydrofluorocarbons) emissions standards. While NHTSA regulates fuel economy and EPA regulates GHGs, and has done so sometimes in joint rules, differences in the agencies' statutory authorities make it so that each agency is required to make an independent judgment about the level of standards that is appropriate.[63]

This is the first time that NHTSA has had the opportunity to consider EPA's small volume manufacturer GHG standards in the context of CAFE low volume petitions for exemption. Just as there are differences in the agencies' statutory directives that require programmatic differences between the fuel economy and greenhouse gas emissions light-duty vehicle programs, differences exist between each agency's low or small volume manufacturer exemption program. EPA's small volume manufacturer regulations, finalized in 2012,[64] defined the process for exemptions from GHG standards [65] differently from the NHTSA program by expanding applicability to light trucks, and lowering the eligibility requirements to only 5,000 vehicles produced in the United States.[66] For NHTSA's program, both the 10,000 vehicle worldwide production limit on eligibility and sole applicability to passenger cars were terms prescribed by Congress in the 1970s.[67]

Three manufacturers considered in this notice (Aston Martin, Ferrari, and McLaren) recently received an alternative low volume standard under the EPA small volume program for vehicles manufactured in MYs 2017–2021.[68] For the first four model years of the program, MYs 2017–2020, EPA proposed and adopted the alternative standards requested by the manufacturers. For MY 2021, EPA finalized MY 2021 standards for McLaren reflecting 3 percent year-over-year reductions from a MY 2017 baseline year.[69]

NHTSA must set alternative standards at the maximum feasible average fuel economy level for the manufacturer to which the alternative standard applies.[70] This means that, as discussed further below, NHTSA believes that the agency cannot set alternative standards for a manufacturer for past model years at the level that the manufacturer requested, if that level is lower than the fuel economy level than the manufacturer actually achieved. In fact, it is frequently the case that the manufacturers achieved a higher fuel economy value than they requested. NHTSA believes that, accordingly, the requested fuel economy value is not the *maximum feasible* fuel economy level that the manufacturer could have achieved in that model year, and is proposing to set standards at the fuel economy values that manufacturers achieved for past MYs.

EPA's final rule also stated that in determining GHG standards for some manufacturers in MY 2021, EPA considered that those standards can be met ''through the use of credits, including air conditioning and off-cycle credits, and the use of program flexibilities including credit carry-forward and credit carry-back within the lead time available.'' [71] As discussed above, NHTSA does not consider the availability of credits when prescribing a maximum feasible average fuel economy standard under the low volume CAFE exemption program. In addition, in NHTSA's program, the

[62] *See* U.S. Energy Information Administration Monthly Energy Review March 2020, Table 3.7c Petroleum Consumption: Transportation and Electric Power Sectors, *available at https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf*. This includes an average estimate of 8.9 million barrels/day of motor gasoline consumed by vehicles in the United States.

[63] *See* 85 FR 24174, 25137 (April 30, 2020).

[64] 77 FR 62624, 62789 (Oct. 15, 2012).

[65] 77 FR 62624, 62789 (Oct. 15, 2012).

[66] To be eligible for alternative standards established under the EPA program, the manufacturer's average sales for the three most recent consecutive model years must remain below 5,000. If a manufacturer's average sales for the three most recent consecutive model years exceeds 4999, the manufacturer will no longer be eligible for exemption and must meet applicable emission standards starting with the model year. See 40 CFR 86.1818–12(g)(1). In contrast, as discussed above, 49 U.S.C. 32902(d)(1) makes clear the exemption applies to manufacturers that manufacture *worldwide* fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, and in the applicable model year. In addition, 49 U.S.C. 32902(d)(1)(B) makes clear the exemption and alternative standard only applies to passenger automobiles.

[67] 42 FR 38374 (July 28, 1977).

[68] 85 FR 39561 (July 1, 2020).

[69] 85 FR 39561, 39563 (July 1, 2020).

[70] 49 U.S.C. 32902(d).

[71] 84 FR 37281 (July 31, 2019).

additional fuel economy benefit from air conditioning and off-cycle technology is added to a vehicle's fuel economy value, and is not a ''credit'' that can be traded or transferred. Accordingly, as discussed above, a manufacturer that plans to use air conditioning and off-cycle technology should include any anticipated benefit from those technologies in the projected fuel economy value for each vehicle configuration as required by 49 CFR 525.7(f).

The following table shows differences between EPA's final small volume standards (g/mile)[72] and NHTSA's proposed alternative standards (mpg).

TABLE 2—EPA AND NHTSA LVM STANDARD COMPARISON

Model year	Manufacturer	EPA LVM STD (g/mi)	EPA LVM STD equivalent (gal/mi)	EPA LVM STD equivalent (mpg)	NHTSA LVM STD (mpg)
2017	Aston Martin	431	0.048497806	20.6	21.4
	Ferrari	421	0.047372567	21.1	21.5
	McLaren	372	0.041858895	23.9	24.3
2018	Aston Martin	396	0.044559469	22.4	22.9
	Ferrari	408	0.045909756	21.8	21.6
	McLaren	372	0.041858895	23.9	23.3
2019	Aston Martin	380	0.042759086	23.4	22.4
	Ferrari	395	0.044446945	22.5	.....
	McLaren	368	0.041408799	24.1	22.5
2020	Aston Martin	374	0.042083943	23.8	22.6
	Ferrari	386	0.04343423	23.0	21.1
	McLaren	360	0.040508608	24.7	22.5
2021	Aston Martin	376	0.042308991	23.6	24.9
	Ferrari	377	0.042421515	23.6	.....
	McLaren	334	0.037582986	26.6	21.5

NHTSA invites comment on any new information on the impact of EPA's GHG standards on a manufacturer's ability to meet an alternative fuel economy standard that the agency should consider.

In regards to the impact of vehicle safety standards on CAFE values, AML stated that Federal Motor Vehicle Safety Standard (FMVSS) No. 214, Side Impact Protection, FMVSS No. 216, Roof Crush Resistance, FMVSS No. 226, Occupant Ejection Mitigation, and FMVSS No. 301, Fuel System Integrity, could have potential adverse impacts on its vehicles' achieved fuel economy levels, requiring increased mass to body and frame structures. Additionally, AML stated that it must consider the Pedestrian Protection requirements as proposed in the UN ECE Global Technical Regulation (GTR) No. 9 due to economies of scale. GTR No. 9 would require increased deformation resistance to body and frame structures, which translate into additional weight.[73]

Ferrari stated that FMVSS No. 216, Roof Crush Resistance, FMVSS No. 226, Occupant Ejection Mitigation, and FMVSS No. 214, Side Impact Protection, affect vehicle weight and aerodynamics, and other aspects of vehicle design. Ferrari also stated that they face challenges regarding compliance with the EPA and California Tier 3 tailpipe and evaporative emissions standards.

Koenigsegg stated that the Federal motor vehicle standards regarding outside rear view mirrors have a significant effect on fuel economy, and that if outside rear view mirrors are replaced by camera systems, fuel economy will improve significantly.

McLaren cited FMVSS No. 214, Side Impact Protection, FMVSS No. 216, Roof Crush Resistance, and FMVSS No. 301, Fuel System Integrity, as safety standards that have impacts on McLaren's achievable fuel economy. McLaren also stated that crashworthiness standards generally tend to decrease fuel economy, since they can preclude, in some instances, the use of lighter-weight components. McLaren additionally cited EPA's Tier 3 emissions rule as a requirement that would demand resources (both financial and personnel) and a balancing of priorities for the company to comply with all government standards.

Mobility Ventures did not identify any other motor vehicle standards that affect the fuel economy achieved or achievable by the MV–1.

Pagani stated that the company's small size limits the amount of resources it can apply to comply with both the mandatory safety and emissions standards and fuel economy requirements (citing NHTSA's proposed and final decisions for Spyker's MY 2006 and 2007 exemption request).[74] Similarly, Pagani cited NHTSA's proposed decision for DeTomaso Automobiles' MY 2000 and 2001 vehicles for the proposition that crashworthiness standards can generally tend to reduce achievable CAFE,[75] since they preclude, in some instances, the use of lighter weight components. Pagani stated that other safety standards that would demand the company's resources, and that could have weight and fuel economy consequences, include upgraded FMVSS No. 301, Fuel System Integrity requirements, upgraded FMVSS No. 214, Side Impact Protection, and upgraded FMVSS No. 216 Roof Crush Resistance.

Spyker stated in its petition for MYs 2008–2010 that California's emissions standards will apply to the company in MY 2006, and the Tier 2–LEV II exhaust standards are applicable in 2007. Accordingly, the company's limited engineering resources would have to be expended to comply with those more stringent standards. With respect to safety, Spyker stated that crash-worthiness standards tend to reduce achievable CAFE because they preclude, in some instances, the use of lighter-

[72] 85 FR 39561, 39564 (July 1, 2020), Table 4—Summary of Standards and Per-Manufacturer GHG Reductions (g/mile).

[73] To the extent that GTR No. 9 adds additional weight and AML has modified its entire fleet of production vehicles based on economies of scale to meet that standard, NHTSA understands that is factored into AML's assessment of the maximum feasible fuel economy level that its fleet could achieve.

[74] 71 FR 49407 (Aug. 23, 2006), 72 FR 28619 (May 22, 2007).

[75] 64 FR 73476 (Dec. 30, 1999).

weight components. Spyker also stated that smaller companies with limited resources must give priority to compliance with safety standards. Spyker had until June 2008 to develop FMVSS No. 208, Occupant Crash Protection compliant advanced air bags (under a NHTSA temporary exemption), which the company stated would add additional weight, and Spyker stated that FMVSS No. 301, Fuel System Integrity would also demand additional resources.

To determine the additional weight that federal motor vehicle safety standards would have on these vehicles, to determine the impact of the standards on fuel economy, NHTSA used published estimates from the MYs 2017–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards Final Regulatory Impact Analysis (FRIA).[76] Table IV–3a in the FRIA shows estimated weight increases for each FMVSS that would become effective between MY 2008 and MY 2018 for passenger vehicles and light trucks, comparing MY 2025 to the MY 2008 baseline fleet.[77] The passenger car values are reproduced below.

TABLE 3—MY 2017–MY 2025 FRIA, TABLE IV–3a WEIGHT ADDITIONS DUE TO FINAL RULES OR POTENTIAL NHTSA REGULATIONS

Standard No.	Title	Added weight (pounds) passenger cars
126	Electronic Stability Control Systems	2.12
206	Door Locks and Door Retention Components	0.00
214[78]	Side Impact Protection	12.43
216[79]	Roof Crush Resistance	11.65
226[80]	Occupant Ejection Mitigation	2.00
301[81]	Fuel System Integrity	1.11
Pedestrian Protection		Not quantified
Total		32.31

As NHTSA stated in the FRIA, these weight estimates, which are based on cost and weight tear-down studies of a few vehicles, cannot possibly cover all the variations in a manufacturer's fleet. Rather, these represent rough averages of potential per-vehicle weights that could be incurred. This is even truer for the vehicles considered in this petition, which, as discussed above, use a high proportion of advanced lightweight materials like carbon fiber reinforced plastics. That said, for purposes of this analysis, NHTSA believes that these weight values are reasonable to use to consider potential impacts on vehicle weight, as the agency does not now have updated weight estimates or estimates specifically for the specialized vehicle types considered in this proposed decision. Additionally, because of the lateness of the agency's response to these petitions, much of the projected weight difference may already be included on manufacturers' vehicles. It is possible that these values might overestimate any potential future weight impacts that may compete with manufacturers' ability to reduce weight to better achieve fuel economy improvements. The agency seeks comment on the methodology used, in addition to any specific information (including tear-down studies, etc.) that could better inform this analysis.

Based on the agency's weight-versus-fuel-economy algorithms as applied in the 2012–2016 CAFE FRIA,[82] a 3–4-pound increase in weight is projected to reduce fuel economy by 0.01 mpg. A manufacturer that had to comply with all additional FMVSS that NHTSA considered in the 2017–2025 final rule would add 32.31 pounds to a passenger car in MY 2025 versus a baseline 2008 passenger car, for an approximate fuel economy penalty of 0.09 mpg. Based on these estimates, NHTSA believes that it is reasonable to conclude that the small increase in weight from the FMVSSs would have negligible effects on any LVM fleet considered in this proposed decision.

As to the impact that criteria pollutant emissions standards would have on a LVM's maximum feasible fuel economy level, EPA stated in its final rule establishing Tier 3 motor vehicle emissions and fuel standards that they ''do not expect the Tier 3 vehicle standards to result in any discernible changes in vehicle . . . fuel economy. Emissions of the pollutants that are controlled by the Tier 3 program—NMOG, NO_X, and PM—are not a function of the amount of fuel consumed, since manufacturers need to design their catalytic emission control systems to reduce these emissions regardless of their engine-out levels.'' [83] Moreover, EPA established special flexibility provisions for small businesses subject to the Tier 3 standards, which include small volume manufacturers (SVMs) that sell less than 5,000 vehicles per year in the United States.[84] In the Tier 3 final rule, EPA stated that the agency ''have found no fundamental reason why, given sufficient lead time, all manufacturers, regardless of company size and vehicle characteristics, will not be able to meet the Tier 3 standards,'' but also established an optional alternative phase-in schedule for SVMs and non-SVM small businesses to meet the standards.[85] Given these findings, NHTSA believes that it is reasonable to conclude that criteria pollutant emissions standards would have a negligible effect on any low volume

[76] Final Regulatory Impact Analysis, Corporate Average Fuel Economy for MY 2017–MY 2025 Passenger Cars and Light Trucks, Table IV–3a (August 2012).

[77] *Id.* at 119. Note, in the MY 2017–2025 Light-Duty CAFE and GHG Rule, the agencies analyzed two baseline fleets, a 2008 baseline fleet and a 2010 baseline fleet. The difference in total added weight for passenger cars between the two fleets is 5.13 pounds (32.31 added pounds for the 2008 fleet and 27.18 added pounds for the 2010 fleet). NHTSA believes that the 5.13 pound difference between the two estimates is trivial; however, the agency decided to use the more conservative 2008 fleet estimates for this analysis.

[78] 49 CFR 571.214.

[79] 49 CFR 571.215.

[80] 49 CFR 571.226.

[81] 49 CFR 571.301.

[82] Final Regulatory Impact Analysis, Corporate Average Fuel Economy for MYs 2012–2016 Passenger Cars and Light Trucks, Table IV–5 (March 2010).

[83] 79 FR 23446 (April 28, 2014).

[84] 79 FR 23534 (April 28, 2014).

[85] *Id.*

manufacturer's maximum feasible fuel economy level.

3. Proposed Maximum Feasible Average Fuel Economy for Exempted Manufacturers

With these considerations taken together, NHTSA proposes to set alternative average fuel economy standards for these seven manufacturers for each model year at the following levels: NHTSA has received final fuel economy data from EPA for MYs 2008–2017 for all LVMs that have outstanding petitions for those years, and is proposing to use those final EPA values for those years. For MY 2018, NHTSA has some final EPA values for petitioning manufacturers' fleets, but not all; where NHTSA has a final EPA value for a manufacturer, NHTSA proposes to set the manufacturer's alternative standard at that level. Where NHTSA does not have a verified final EPA value for a manufacturer, NHTSA proposes to set the manufacturer's alternative standard at the level submitted by manufacturers in their non-final fuel economy reports to the agencies. NHTSA believes that all manufacturers covered by this proposed decision submitted information sufficient for the agency to conclude that their achieved fuel economy levels for past model years were the maximum feasible fuel economy levels that they could have achieved for those model years.

For MYs 2019–2023, the proposed alternative standards take into consideration both CBI and non-CBI information submitted to the agency, including the manufacturer's requested alternative standard and predicted achieved fleet fuel economy value (if that value differed from the requested alternative standard). In addition, the alternative standards proposed today reflect NHTSA's belief that even though the manufacturers considered in this notice may have less capability to improve their fleet fuel economy than full-line manufacturers for the reasons listed above, manufacturers should aim to at least hold their fleet fuel economy constant, if not improve it year over year. Congress granted NHTSA the ability to provide an exemption to low volume manufacturers in part because it believed that the need of the nation would not be adversely affected by allowing the limited exemption;[86] however, as discussed further in the draft environmental assessment below, transportation fuel consumption is expected to remain a major source of U.S. energy use through at least mid-decade. NHTSA believes that the proposed fuel economy levels presented below appropriately balance the CAFE exemption program with EPCA's directive to conserve energy, and that standards that do not backslide year over year for imminently future model years are therefore maximum feasible for the manufacturers petitioning the agency for alternative standards.

Considering the unique circumstances of this proposed decision, we also note that in accordance with 49 CFR 525.11—*Termination of exemption; amendment of alternative average fuel economy standard,* the agency may also initiate another rulemaking either on its own motion or on petition by an interested person to terminate an exemption granted under this part or to amend an alternative average fuel economy standard. While that may seem premature to mention at this point, as the agency has not yet issued final standards, NHTSA must set standards for a petitioning low volume manufacturer at the maximum feasible level. If additional data indicate that a manufacturer's achieved CAFE level differs significantly from the levels proposed in this notice or finalized, NHTSA will consider all options available to the agency to ensure that each manufacturer's alternative standard is the maximum feasible standard that the manufacturer can achieve. In addition, as discussed above, NHTSA will consider any additional information submitted by commenters, manufacturers (if additional information is available), or EPA (if additional final fuel economy data becomes available) that is submitted during the pendency of the comment period associated with this notice.

Accordingly, NHTSA believes that the proposed alternative standards presented below are maximum feasible for these manufacturers for these model years, consistent with the purpose of EPCA/EISA.

TABLE 4—PROPOSED ALTERNATIVE STANDARDS FOR MYS 2008–2023

	Aston Martin	Ferrari	Koenigsegg	McLaren	Mobility Ventures	Pagani	Spyker
2008	19.0						19.6
2009	18.6						19.6
2010	19.2						20.7
2011	19.1						
2012	19.2			23.2			
2013	20.1			24.0			
2014	19.7			23.8	19.6	15.6	
2015	19.8		16.7	22.9	20.1		
2016	20.2	21.7		23.2	20.1	15.6	
2017	21.4	21.5		24.3		15.6	
2018	22.9	21.6	16.7	23.3		15.6	
2019	22.4		16.6	22.5		15.5	
2020	22.6	21.1	16.6	22.5		15.5	
2021	24.9		16.6	21.5		15.5	
2022	24.9		16.9	24.6		15.5	
2023	24.9		16.9	25.7		15.5	

These alternative standards are being proposed only for Aston Martin Lagonda Limited for MYs 2008–2023, Ferrari N.V. for MYs 2016–2018 and MY 2020, Koenigsegg Automotive AB for MYs 2015 and 2018–2023, McLaren Automotive for MYs 2012–2023, Mobility Ventures LLC for MYs 2014–2016, Pagani Automobili S.p.A for MYs

[86] *See, e.g.,* 44 FR at 3711 (Jan. 18, 1979) (''The agency believes that the language in section 502(c) specifying that this agency may exempt low volume manufacturers indicates that Congress intended this agency to apply a test of whether granting an exemption would be generally consistent with the purposes of the Act. The main purpose of the Act is conserving energy.'').

2014 and 2016–2023, and Spyker Automobielen B.V. for MYs 2008–2010, and not for low volume manufacturers generally or for a class of automobiles of exempted manufacturers.

NHTSA is also proposing to correct the reference to alternative fuel economy standards in 49 CFR 531.5(a), as paragraph (f) does not exist.

NHTSA seeks comment on the analysis that led to this proposed decision.

4. Regulatory Impact Analyses

a. Regulatory Evaluation

NHTSA has considered the potential impacts of this action under Executive Order (E.O.) 12866 and the Department of Transportation's regulatory policies and procedures and has concluded that those orders do not apply, because this action is not an agency statement of general applicability and future affect. This decision is not generally applicable, because the agency has proposed to set alternative average fuel economy standards for each individual manufacturer.

b. Regulatory Flexibility Determination

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) unless the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I certify this proposed decision would not have a significant impact on a substantial number of small entities. This proposed decision exempts low volume manufacturers from the generally applicable passenger car CAFE standards and proposes to set alternative standards for those low volume manufacturers at maximum feasible levels.

c. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action.[87] The Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500–1508) direct Federal agencies to prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown.[88] The environmental assessment must ''briefly discuss the purpose and need for the proposed action, alternatives[], and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.'' [89] This section serves as the National Highway Traffic Safety Administration's (NHTSA) Draft Environmental Assessment (Draft EA). NHTSA invites public comments on the contents and tentative conclusions of this Draft EA.

1. Purpose and Need for Action

In accordance with the Energy Policy and Conservation Act (EPCA) of 1975, as amended by the Energy Independence and Security Act (EISA) of 2007, and the procedures at 49 CFR part 525, the purpose of this proposal is to set alternative corporate average fuel economy (CAFE) standards for low volume manufacturers that have petitioned the agency for an alternative standard at the maximum feasible fuel economy level that NHTSA believes each manufacturer can achieve in each model year. While the purpose of setting industry-wide fuel economy standards under EPCA/EISA is, among other things, energy conservation, Congress granted NHTSA the ability to provide an exemption to low volume manufacturers in part because it believed that the need of the United States to conserve energy would not be adversely affected by allowing the limited exemption.[90] If NHTSA did not grant alternative standards for low volume manufacturers, they would have to meet the industry-wide passenger car standard in each applicable model year, which, in most if not all cases, is more stringent than the maximum feasible fuel economy level that NHTSA believes these low volume manufacturers can achieve.

When determining the maximum feasible fuel economy levels that manufacturers can achieve in each model year, EPCA/EISA requires that NHTSA consider four factors: technological feasibility, economic practicability, the effect of other motor vehicle standards of the government on fuel economy, and the need of the United States to conserve energy. NHTSA relies on information in each low volume manufacturer's petition for exemption, which are discussed in more detail in the preamble above, to propose alternative average fuel economy standards at the maximum feasible level for each manufacturer. However, the unique nature of this action requires NHTSA to set maximum feasible standards for model years that have already passed. NHTSA's proposed action and range of alternatives considered below reflects these statutory and practical considerations.

2. Proposed Action and Alternatives

For this action NHTSA has considered a No Action Alternative and two alternatives. The No Action Alternative assumes that in the absence of NHTSA action on their petitions, manufacturers would meet their footprint-based CAFE standard for MYs 2013–2023.[91] One action alternative proposes to set alternative standards at the levels that the manufacturers requested for model years that NHTSA does not have final fuel economy data (the ''as-requested'' alternative); and the preferred alternative proposes to set standards at the levels detailed in the preamble above. NHTSA did not consider an alternative that proposed to set an alternative standard for a model year at a lower level than the manufacturer achieved in past model years (*i.e.,* in some cases for past model years what the manufacturer requested) because that would not have been the maximum feasible fuel economy level that the manufacturer could have achieved.

[87] 42 U.S.C. 4332(2)(C).

[88] 40 CFR 1501.5(a).

[89] 40 CFR 1501.5(c)(2).

[90] *See, e.g.,* 44 FR at 3711 (Jan. 18, 1979).

[91] As discussed above, NHTSA has expired MY 2012 and earlier fuel economy credits in accordance with 49 CFR 536.5(c)(2), meaning that low volume manufacturers that built vehicles in MYs 2008–2012 cannot now buy fuel economy credits from manufacturers that exceeded their CAFE standard in those years to offset the CAFE values of the low volume vehicles produced in those years. As a simplifying assumption, because there can be no difference between the fuel used in MYs 2008–2012 under the No Action Alternative baseline and action scenarios, fuel use in those years was not considered.

3. Affected Environment

Broadly, NHTSA actions regulating motor vehicle fuel economy could have a range of environmental impacts, including to energy use, air quality, climate change, resource extraction and use, and to environmental justice communities, among others. Every time NHTSA sets industry-wide CAFE standards, the agency examines the environmental impact of the proposed standards and a range of alternatives on these resources in an environmental impact statement (EIS). The EIS uses estimates of fuel consumption that would result if the agency adopted different levels of fuel economy standards to quantitatively estimate the impacts to energy use, air quality, and greenhouse gas emissions and climate change. NHTSA also qualitatively discusses the lesser impacts to other resource areas, including land use and development, hazardous materials and regulated waste, historical and cultural resources, noise, and environmental justice. NHTSA's recent Final Supplemental Environmental Impact Statement (Final SEIS) for the notice of proposed rulemaking (NPRM) for MY 2024–2026 passenger car and light truck fuel economy standards (hereinafter ''Final SEIS'') provides the most up-to-date estimates of the impact of different levels of fuel economy standards on these resource areas and discussion of the environmental impacts. The Final SEIS discussions of environmental impacts resulting from changes in fuel use from motor vehicles is incorporated by reference here,[92] as discussed further below.

Transportation fuel accounts for a large portion of total U.S. energy consumption and energy imports and has a significant impact on the functioning of the energy sector as a whole. Although U.S. energy efficiency has been increasing and the U.S. share of global energy consumption has been declining in recent decades, total U.S. energy consumption has been increasing over that same period. Until a decade ago, most of this increase came not from increased domestic energy production but from the increase in imports, largely for use in the transportation sector. U.S. net petroleum imports are expected to result primarily from fuel consumption by light-duty and heavy-duty vehicles, with the transportation sector expected to account for 76.9 percent of total U.S. petroleum consumption by 2050. This means that the transportation sector will continue to be the largest consumer of U.S. petroleum and the second-largest consumer of total U.S. energy, after the industrial sector. Please refer to Chapter 3 of the Final SEIS (Energy) for a comprehensive discussion of transportation sector energy impacts, including discussions of how the passenger car and light truck vehicle sector affects overall energy use in the United States and how improvements in the fuel economy of vehicles and increasing energy production together affect U.S. energy security by reducing the overall U.S. trade deficit and the macroeconomic vulnerability of the United States to foreign oil supply disruptions.

Next, several human activities related to motor vehicles cause gases and particles to be emitted into the atmosphere, including driving cars and trucks; extracting, refining, and transporting crude oil; burning coal, natural gas, and other fossil fuels; and manufacturing chemicals and other products from raw materials as well as other industrial and agricultural operations. Emissions of vehicle-related sources of air pollutants, including criteria pollutants and mobile source air toxics (MSATs), from both upstream fuel extraction processes and vehicle tailpipes impact air quality.[93] In addition to causing adverse environmental impacts, air pollution from upstream and downstream sources causes emissions-related health conditions like increased asthma incidences, work-loss days, and even premature mortality.

To reduce air pollution levels, the Environmental Protection Agency (EPA) (and some state agencies, like the California Air Resources Board) established regulatory programs to control sources of emissions from transportation. The regulatory programs that cover the vehicles subject to proposed alternative CAFE standards in this notice include EPA's Tier 2 and Tier 3 vehicle emissions and gasoline standards, which prescribe reductions in vehicle tailpipe emissions as well as limits for the sulfur content in gasoline. As discussed further in Chapter 4 of NHTSA's Final SEIS (Air Quality), since the 1970s aggregate emissions traditionally associated with vehicles have decreased substantially even as vehicle miles traveled (VMT) increased by approximately 173 percent from 1970 to 2014, and additional growth in VMT will have a smaller impact on emissions because of these stricter EPA standards for vehicle tailpipe emissions and fuels.[94]

Chapter 4 of the Final SEIS also discusses how air pollutant emissions increase the risk of adverse health impacts, particularly for populations that live, work, or go to school near high-traffic roadways or that are exposed to high-traffic; the human health and environmental effects of criteria pollutants and MSATs; the relevant regulatory programs that control air pollutant emissions from vehicles and gasoline; and trends in travel and emissions from highway vehicles. Chapter 4 estimates the impact of emissions of criteria pollutants and MSATs from passenger cars and light trucks that would result from different levels of increases in CAFE standards for the U.S. light duty vehicle fleet. Please refer to that Chapter for a comprehensive discussion of those impacts.

Finally, as discussed further in Chapter 5 of the Final SEIS (Greenhouse Gas Emissions and Climate Change), the carbon dioxide and other greenhouse gasses emitted from the tailpipes of vehicles driven in the United States have global impacts. Chapter 5 of the Final SEIS provides a comprehensive survey of panel-reviewed synthesis and assessment reports from the Intergovernmental Panel on Climate Change (IPCC) and U.S. Global Climate Change Research Program (GCRP), supplemented with past reports from the U.S. Climate Change Science Program (CCSP), the National Research Council, the Arctic Council, and EPA's *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act* (EPA 2009), which relied heavily on past major international or national scientific assessment reports, to provide decisionmakers and the public with information about climate change's potential impacts on health, society, and the environment. Increases in greenhouse gas emissions, in particular from human activities like burning fossil fuels,[95] leads to changes in global

[92] 40 CFR 1501.12.

[93] In the motor vehicle context, emissions from fuel extraction, refining, and transportation are generally referred to as upstream emissions, while emissions from the tailpipe of the vehicle that result from the vehicle being driven are generally referred to as downstream emissions. Decreases in upstream emissions could result from decreases in gasoline consumption, and therefore lower volumes of fuel production and distribution, while decreases in downstream emissions generally occur because of on-vehicle pollution controls like catalytic converter systems or because the vehicle is being driven less, and therefore emits fewer emissions from the tailpipe.

[94] Final SEIS, at 4–13.

[95] While greenhouse gas emissions and the corresponding processes that affect the aforementioned climate parameters are highly complex and variable, an increasing number of studies conclude that anthropogenic greenhouse gas

Continued

average surface temperature, precipitation, ice cover, sea level, cloud cover, sea surface temperatures and currents, and other climate conditions.

Chapter 5 of the Final SEIS explains how NHTSA estimated the levels of greenhouse gas emissions that would result from different levels of CAFE standards, and how the agency modeled certain climate parameters including global concentrations of CO_2, sea level rise, global mean surface temperature, and ocean pH. At the levels of estimated fuel use resulting from different levels of industry-wide CAFE standards for model years 2024–2026, NHTSA estimated the following global impacts (presented as a range between the no action alternative, which is an approximately 1.5 percent year over year increase in the industry-wide light duty CAFE standards, and the most stringent action alternative, which is an approximately 10 percent year over year increase in the industry-wide light duty CAFE standards).[96]

TABLE 5—CAFE MY 2024–2026 FINAL SEIS ESTIMATES OF CLIMATE IMPACTS

CO_2 concentration (ppm)			Global mean surface temperature increase (°C)			Sea-level rise (cm)			Ocean pH		
2040	2060	2100	2040	2060	2100	2040	2060	2100	2040	2060	2100
478.92–479.04	565.10–565.44	788.33–789.11	1.287–1.287	2.006–2.008	3.481–3.484	22.87–22.87	36.55–36.56	76.22–76.28	8.4100–8.4099	8.3478–8.3476	8.2180–8.2176

Although actions related to motor vehicle fuel economy have local, national, and global effect, it is difficult to assess the area of effect for *this* action because—unlike the industry-wide EIS that assigns nationwide impacts based in part on population [97]—NHTSA does not know where the vehicles considered in this action are sold and driven. Therefore, as discussed further below, NHTSA made several simplifying assumptions for purposes of estimating the environmental impacts of the proposed action and alternatives.

The following subsection presents the estimated impacts of this action on fuel use for each alternative and the associated estimated downstream greenhouse gas emissions impacts based on estimated fuel use. NHTSA did not conduct independent climate or air quality modeling for this action because, as discussed further below, the agency believes that it is reasonable to infer from the amount of estimated fuel used under each alternative that none of the alternatives considered in this notice would result in appreciable environmental impacts, and this information would not result in any new meaningful information for decisionmakers and the public. To read a comprehensive discussion of the resource areas summarized above, or the other resource areas considered when setting industry-wide CAFE standards, please see the Final SEIS.

4. Environmental Consequences

Like the estimates of fuel consumption that would result if NHTSA set industry-wide CAFE standards at different levels, NHTSA's fuel consumption estimates calculated for this action provide a starting point to estimate a relative potential range of environmental impacts.

To estimate the amount of additional fuel consumed by the exempted fleet over its operating lifetime,[98] NHTSA calculated the difference between the low volume manufacturer's footprint-based standard for MY 2013 forward (*i.e.,* the estimated fuel used under the no-action alternative, for model years for which fuel economy credits are available) and their proposed alternative standard (or achieved fleet fuel economy for model years that have already passed). NHTSA multiplied this difference by the manufacturer's estimated U.S. production volume,[99] and then by an estimated total miles that these vehicles could travel as an active part of the fleet (*i.e.,* the vehicles' estimated yearly VMT).[100] The resulting estimates of additional lifetime fuel consumption for all manufacturers and model years considered in this action compared to the no-action alternative are shown below.

TABLE 6—ESTIMATED ADDITIONAL LIFETIME FUEL CONSUMPTION

	No action	Preferred alternative	As requested
Total Gallons	48,873,908	88,643,357	88,997,267
Difference from the No Action Alternative	.....	39,769,449	40,123,359

To put this in perspective, NHTSA looked at the average amount of fuel consumed by an average passenger car subject to the industry-wide passenger car CAFE standard over its useful life, in this case a MY 2017 Toyota Camry. The estimated total gallons of fuel used if standards are set at the levels proposed in this action are roughly equivalent to the fuel used by approximately 8,534 MY 2017 Toyota Camrys. In other words, setting alternative standards at the levels proposed in this notice for the 15 model years covered by this notice would have the energy effect of a one-time addition of 171 MY 2017 Toyota Camrys per U.S. state. Compared to the pre-pandemic peak of approximately 17 million vehicles sold in the United States in a model year, the vehicles considered in

emissions are affecting the global climate in detectable and quantifiable ways.

[96] Reproduced from Final SEIS Table 5.4.2–2, at 5–42. Note that the numbers in Table 5.4.2–2 were rounded for presentation purposes, and as a result, the reductions might not reflect the exact difference of the values in all cases. See the Final SEIS at 5–42 for additional notes about these values.

[97] Moreover, this is unlike a typical NEPA action such as a pipeline route, forest management plan, etc. that considers a site-specific proposal and site-specific alternatives.

[98] Approximately 15 years, based on the estimated passenger sedan life as calculated in the latest industry-wide CAFE rulemaking action.

[99] As discussed in the preamble, where NHTSA did not have final production data for a manufacturer, in particular where estimated production data is still confidential, the agency averaged the last three years of a manufacturers' actual production data.

[100] As discussed in the preamble, NHTSA estimated that a high-performance vehicle would travel 2,543 miles per year, while a mobility van would travel 11,128 miles per year.

this notice that cover fifteen model years contribute only a small amount to total U.S. transportation fuel use.

As with the impacts to energy use, NHTSA expects that the proposed action would have a relatively minimal impact on air quality, and accordingly, air quality related health effects, based on the relative percentage of fuel used by the vehicles considered in this action compared to total light-duty vehicle fuel use. As discussed in Chapter 4 of NHTSA's Final SEIS, nationwide criteria pollutant emissions from vehicle tailpipes are projected to decrease over time, even as VMT increases, due to increasingly stringent EPA regulation of criteria pollutant emissions and reductions in emissions from fuel production. NHTSA does not expect that trend to change based on the levels of fuel use projected for this action. In addition, some of the increases in criteria pollutant emissions projected in the Final SEIS are due to increases in upstream emissions from power plants from increased electric vehicle use. The vehicles considered in this action run primarily on gasoline; none of the vehicles with electrified powertrains draw energy from the electric grid. The same projected trends exist for toxic air pollutants; emissions are projected to decrease through 2050 based on increasingly stringent EPA regulations and reductions in emissions from fuel production, despite growth in total VMT. NHTSA does not expect that any of these trends would change based on the minor increases in fuel use projected from this action.

To estimate the approximate effect that this action would have on greenhouse gas emissions, NHTSA first used EPA's Greenhouse Gas Equivalencies Calculator to convert the estimated additional gallons of gasoline that would be used under the alternatives to metric tons of carbon dioxide equivalent emissions.[101] Over the lifetime of all model year vehicles considered in this notice (15 model years' worth of vehicles that each last approximately 15 years), for the fuel use considered in this action, the following additional carbon dioxide equivalent emissions are expected to result: 285,193 metric tons of carbon dioxide equivalent emissions under the ''as-requested'' alternative, and 282,047 metric tons of carbon dioxide equivalent emissions at the preferred alternative levels. To put this in perspective, NHTSA referenced EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019 report, which estimated that the U.S. passenger car and light truck vehicle fleet emits a little over a thousand million metric tons of carbon dioxide equivalent emissions per year (averaged over 2017, 2018, and 2019).[102] Over the useful life of a vehicle considered in this action, the vehicles considered in this action are estimated to produce an estimated increase in carbon dioxide equivalent emissions of 0.00169% and 0.00167% (for the as-requested and preferred alternative levels, respectively) of total light duty vehicle carbon dioxide equivalent emissions over what the vehicles would have produced had they met their footprint-based standard.

NHTSA did not perform independent climate modeling for this proposal because the agency believes that is reasonable to infer that if relatively small—but not trivial—climate impacts would result from large-scale changes in fuel use from changes in the industry-wide passenger car and light truck standards, as shown in the table of estimated atmospheric CO_2 concentrations, global mean surface temperature increases, sea-level rise, and ocean pH above, estimating the impacts of the no action alternative and alternatives presented in this notice would not present any additional meaningful information for decisionmakers and the public.

Some potential impacts of the proposed action could be mitigated through other means; as discussed above, EPA also sets alternative carbon dioxide emissions standards for some of the low volume manufacturers considered in this notice. Unlike the structure of EPCA/EISA, which allows civil penalty payment for each 0.1 of a mile a gallon by which the manufacturer falls short of the applicable average fuel economy standard,[103] manufacturers must be in compliance with EPA regulations promulgated under the Clean Air Act to sell their vehicles. To the extent that EPA sets higher alternative standards for model year 2022 and 2023 vehicles, some of the estimated impacts could be mitigated. Next, the estimates of fuel use presented here are dependent on several assumptions, one being how many miles these vehicles are driven. The vehicles covered by this proposed exemption represent an extremely small fraction of overall motor vehicle sales and on-road VMT; most of the vehicles considered in this notice are estimated to drive a quarter of the mileage of the average passenger car. If these vehicles were or are driven less than NHTSA estimated, fuel use, air quality impacts, and greenhouse gas emissions would be reduced accordingly. However, to the extent that some of the vehicles considered in this action have already been built and sold, the impacts of those vehicles achieving a lower fuel economy level than their footprint-based standard represent an unavoidable adverse impact.

Both alternatives considered in this Draft EA result in increased fuel use compared to the no-action alternative; however, the preferred alternative does result in marginally less estimated fuel use than the ''as requested'' alternative. NHTSA does not believe that establishing alternative CAFE standards at the preferred alternative levels would contribute appreciably to any of the environmental impacts considered in this Draft EA. NHTSA seeks comment on this analysis and whether there are any environmental impacts that the agency has not considered that are relevant to a reasoned choice by the decisionmaker.

5. Agencies and Persons Consulted

NHTSA coordinated with EPA to seek their feedback on this Draft EA, and EPA had no comments or suggested changes.

6. Conclusion

NHTSA has reviewed the information presented in this Draft EA and concludes that the proposed action would have minimal impacts on the quality of the human environment. Based on the information in this Draft EA and assuming no additional information or changed circumstances, NHTSA expects to issue a Finding of No Significant Impact (FONSI). Such a finding will be made only after careful review of all public comments received. A Final EA and a FONSI, if appropriate, will be issued as part of the final rule.

Proposed Regulatory Text

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is proposed to be amended as follows:

[101] U.S. EPA Greenhouse Gas Equivalencies Calculator, *https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.* EPA specifies that estimates from this calculator are approximate and should not be used for emission inventories or formal carbon emissions analysis. NHTSA used these estimates as part of its determination that a formal carbon emissions analysis is not required for this action.

[102] U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2019, at Table 2–13, available at *https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=wEy8wQuGrWS8Ef_hSLXHy1kYwKs4.ZaU.*

[103] 49 U.S.C. 32912(b).

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

■ 1. The authority citation for part 531 is revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.95.

■ 2. Amend § 531.5 by

■ a. Removing from paragraph (a) the term ''paragraph (f)'' and add in its place ''paragraph (e)'' ;

■ b. Revising paragraphs (e)(4) and (15); and

■ c. Adding paragraphs (e)(16) through (20).

The revisions and additions read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(e) * * *

(4) Aston Martin Lagonda Limited Average Fuel Economy Standard

Model year	(Miles per gallon)
2008	19.0
2009	18.6
2010	19.2
2011	19.1
2012	19.2
2013	20.1
2014	19.7
2015	19.8
2016	20.2
2017	21.4
2018	22.9
2019	22.4
2020	22.6
2021	24.9
2022	24.9
2023	24.9

* * * * *

(15) Spyker Automobielen B.V.

Model year	(Miles per gallon)
2008	19.6
2009	19.6
2010	20.7

(16) Ferrari

Model year	(Miles per gallon)
2016	21.7
2017	21.5
2018	21.6
2020	21.1

(17) Koenigsegg

Model year	(Miles per gallon)
2015	16.7
2018	16.7
2019	16.6
2020	16.6
2021	16.6
2022	16.9
2023	16.9

(18) McLaren

Model year	(Miles per gallon)
2012	23.2
2013	24.0
2014	23.8
2015	22.9
2016	23.2
2017	24.3
2018	23.3
2019	22.5
2020	22.5
2021	21.5
2022	24.6
2023	25.7

(19) Mobility Ventures

Model year	(Miles per gallon)
2014	19.6
2015	20.1
2016	20.1

(20) Pagani

Model year	(Miles per gallon)
2014	15.6
2016	15.6
2017	15.6
2018	15.6
2019	15.5
2020	15.5
2021	15.5
2022	15.5
2023	15.5

* * * * *

Issued under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–12618 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 87, No. 126
Friday, July 1, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for August 2022

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in August 2022 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Certain Cased Pencils from China A–570–827 (5th Review)	Mary Kolberg (202) 482–1785.
Emulsion Styrene-Butadiene Rubber from Brazil A–351–849 (1st Review)	Thomas Martin (202) 482–3936.
Emulsion Styrene-Butadiene Rubber from Mexico A–201–848 (1st Review)	Thomas Martin (202) 482–3936.
Emulsion Styrene-Butadiene Rubber from Poland A–455–805 (1st Review)	Thomas Martin (202) 482–3936.
Emulsion Styrene-Butadiene Rubber from South Korea A–580–890 (1st Review)	Thomas Martin (202) 482–3936.

Countervailing Duty Proceedings

No Sunset Review of Countervailing duty orders is scheduled for initiation in August 2022

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in August 2022.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 14, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–14140 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–835	731–TA–703	China	Furfuryl Alcohol (5th Review)	Mary Kolberg, (202) 482–1785.
A–580–889	731–TA–1330	South Korea ...	Dioctyl Terephthalate (1st Review)	Mary Kolberg, (202) 482–1785.
A–583–803	731–TA–410	Taiwan	Light-Walled Rectangular Welded Carbon Steel Pipe and Tube (5th Review).	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 14, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–14144 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of July 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

Antidumping Duty Proceedings	
BELGIUM: Citric Acid and Certain Citrate Salts, A–423–813	7/1/21–6/30/22
COLOMBIA: Citric Acid and Certain Citrate Salts, A–301–803	7/1/21–6/30/22
FRANCE: Methionine, A–427–831	3/4/21–6/30/22
INDIA: Corrosion-Resistant Steel Products, A–533–863	7/1/21–6/30/22
INDIA: Fine Denier Polyester Staple Fiber, A–533–875	7/1/21–6/30/22
INDIA: Polyethylene Terephthalate (Pet) Film, A–533–824	7/1/21–6/30/22
IRAN: In-Shell Pistachios, A–507–502	7/1/21–6/30/22
ITALY: Certain Pasta, A–475–818	7/1/21–6/30/22
ITALY: Corrosion-Resistant Steel Products, A–475–832	7/1/21–6/30/22
JAPAN: Clad Steel Plate, A–588–838	7/1/21–6/30/22
JAPAN: Cold-Rolled Steel Flat Products, A–588–873	7/1/21–6/30/22
JAPAN: Polyvinyl Alcohol, A–588–861	7/1/21–6/30/22
JAPAN: Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/21–6/30/22
JAPAN: Steel Concrete Reinforcing Bar, A–588–876	7/1/21–6/30/22
MALAYSIA: Steel Nails, A–557–816	7/1/21–6/30/22
MALAYSIA: Welded Stainless Steel Pressure Pipe, A–557–815	7/1/21–6/30/22
OMAN: Steel Nails, A–523–808 7/1/21–6/30/22.	
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, A–580–878	7/1/21–6/30/22
REPUBLIC OF KOREA: Fine Denier Polyester Staple Fiber, A–580–893	7/1/21–6/30/22
REPUBLIC OF KOREA: Passenger Vehicle and Light Truck Tires, A–580–908	1/6/21–6/30/22
REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/21–6/30/22
REPUBLIC OF KOREA: Steel Nails, A–580–874	7/1/21–6/30/22
SOCIALIST REPUBLIC OF VIETNAM: Certain Walk-Behind Lawn Mowers and Parts Thereof, A–552–830	12/30/20–6/30/22
SOCIALIST REPUBLIC OF VIETNAM: Steel Nails, A–552–818	7/1/21–6/30/22
SOCIALIST REPUBLIC OF VIETNAM: Welded Stainless Pressure Pipe, A–552–816	7/1/21–6/30/22
TAIWAN: Corrosion-Resistant Steel Products, A–583–856	7/1/21–6/30/22
TAIWAN: Fine Denier Polyester Staple Fiber, A–583–860	7/1/21–6/30/22
TAIWAN: Passenger Vehicle and Light Truck Tires, A–583–869	1/6/21–6/30/22
TAIWAN: Polyethylene Terephthalate (Pet) Film, A–583–837	7/1/21–6/30/22
TAIWAN: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/21–6/30/22
TAIWAN: Steel Nails, A–583–854	7/1/21–6/30/22
THAILAND: Carbon Steel Butt-Weld Pipe Fittings, A–549–807	7/1/21–6/30/22
THAILAND: Citric Acid and Certain Citrate Salts, A–549–833	7/1/21–6/30/22
THAILAND: Passenger Vehicle and Light Truck Tires, A–549–842	1/6/21–6/30/22
THAILAND: Weld Stainless Steel Pressure Pipe, A–549–830	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Carbon Steel Butt-Weld Pipe Fittings, A–570–814	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Chassis and Subassemblies Thereof, A–570–135	3/4/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Sodium Potassium Phosphate Salts, A–570–962	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Grating, A–570–947	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe, A–570–910	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Collated Steel Staples, A–570–112	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Walk-Behind Lawn Mowers and Parts Thereof, A–570–129	12/30/20–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Cold-Rolled Steel Flat Products, A–570–029	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Corrosion-Resistant Steel Products, A–570–026	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Fine Denier Polyester Staple Fiber, A–570–060	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Persulfates, A–570–847	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Quartz Surface Products, A–570–084	7/1/21–6/30/22
THE PEOPLE'S REPUBLIC OF CHINA: Xanthan Gum, A–570–985	7/1/21–6/30/22
TURKEY: Certain Pasta, A–489–805	7/1/21–6/30/22
TURKEY: Steel Concrete Reinforcing Bar, A–489–829	7/1/21–6/30/22
UKRAINE: Oil Country Tubular Goods, A–823–815	7/1/21–6/30/22
Countervailing Duty Proceedings	
INDIA: Corrosion-Resistant Steel Products, C–533–864	1/1/21–12/31/21
INDIA: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), C–533–825	1/1/21–12/31/21
ITALY: Certain Pasta, C–475–819	1/1/21–12/31/21
ITALY: Corrosion-Resistant Steel Products, C–475–833	1/1/21–12/31/21
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, C–580–879	1/1/21–12/31/21
SOCIALIST REPUBLIC OF VIETNAM: Passenger Vehicle and Light Truck Tires, C–552–829	11/10/20–12/31/21
SOCIALIST OF REPUBLIC OF VIETNAM: Steel Nails, C–552–819	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Walk-Behind Lawn Mowers and Parts Thereof, C–570–130	10/30/20–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Sodium and Potassium Phosphate Salts, C–570–963	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe, C–570–911	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Cold-Rolled Steel Flat Products, C–570–030	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Collated Steel Staples, C–570–113	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Corrosion-Resistant Steel Products, C–570–027	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Prestressed Concrete Steel Wire Strand, C–570–946	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Quartz Surface Products, C–570–085	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Steel Grating, C–570–948	1/1/21–12/31/21
TURKEY: Certain Pasta, C–489–806	1/1/21–12/31/21
TURKEY: Steel Concrete Reinforcing Bar, C–489–830	1/1/21–12/31/21
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2022. If Commerce does not receive, by the last day of July 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 24, 2022.

Scot Fullerton,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–14126 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR 53206.

[13] *See Final Rule,* 86 FR 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) has made sales of multilayered wood flooring (wood flooring) from the People's Republic of China (China) at prices below normal value during the period of review (POR) December 1, 2019, through November 30, 2020. In addition, Commerce determines that certain companies had no shipments during the POR.

DATES: Applicable July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Alexis Cherry, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 telephone: (202) 482–6478 and (202) 482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of the administrative review on December 27, 2021.[1] For the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The product covered by the *Order* is wood flooring from China. A full

[1] See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2019–2020, 86 FR 73252 (December 27, 2021) (Preliminary Results), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended

description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice.[4] 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.*

Changes from the Preliminary Results

Based on our analysis of the comments received, Commerce made certain revisions to the calculation of the preliminary weighted-average dumping margin assigned to Senmao and the non-examined, separate rate respondents. The Issues and Decision Memorandum contains descriptions of these revisions.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that certain companies did not have shipments of subject merchandise during the POR. As we received no information to contradict our preliminary determination with respect to those companies, we continue to find that they made no shipments of subject merchandise to the United States during the POR. Additionally, we find that Jiashan HuiJiaLe Decoration Material Co., Ltd. had no shipments of subject merchandise during the POR.[5] Accordingly, we will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification for all of the companies listed in Appendix II.[6]

Separate Rates

Consistent with the *Preliminary Results,* we determine that Senmao and nine additional companies that were not selected for individual examination demonstrated their eligibility for separate rates.[7]

Rate for Non-Examined Separate Rate Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, Commerce's normal practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins of the selected companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[8] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to ''use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.'' [9]

For the final results of this review, we determine the estimated weighted-average dumping margin for Senmao to be above zero or *de minimis.* Thus, consistent with the *Preliminary Results,* we are assigning Senmao's weighted-average dumping margin as the rate for the non-examined respondents which qualify for a separate rate in this review as a ''reasonable method'' for assigning a rate to the non-examined respondents.[10]

The China-Wide Entity

Aside from the companies for which we made a final no-shipment determination, Commerce considers all other companies for which a review was requested, and which did not demonstrate separate rate eligibility, to be part of the China-wide entity.[11]

Final Results of Administrative Review

For the companies subject to this administrative review which established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period December 1, 2019, through November 30, 2020:

Producer/exporter	Weighted-average dumping margin (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	39.27
Non-Selected Companies Under Review Receiving a Separate Rate [12]	39.27

Disclosure

Pursuant to 19 CFR 351.224(b), within five days of the publication of this notice in the **Federal Register**, we will disclose to the parties to this proceeding, the calculations that we performed for these final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. If a timely summons is filed at the U.S. Court of International

Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order, 76 FR 76690 (December 8, 2011), as amended in Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012) (collectively, Order); see also Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders, 82 FR 27799 (June 19, 2017).

[4] *See* Appendix I.

[5] *See* Issues and Decision Memorandum.

[6] See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011) (Assessment Notice); see also ''Assessment Rates'' section, below.

[7] *See* Appendix IV.

[8] *See Longkou Haimeng Mach. Co.* v. *United States,* 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656, 36660 (July 24, 2009).

[9] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[10] *See Preliminary Results* PDM at 13–14; *see also* section 735(c)(5)(B) of the Act.

[11] *See* Appendix III.

[12] *See* Appendix IV.

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).

For Senmao, whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and because we do not have entered values for all U.S. sales to a particular importer (or customer), Commerce intends to calculate a per-unit assessment rate by dividing the total amount of dumping for reviewed sales of subject merchandise to that importer (or customer) by the total quantity sold to that importer (or customer).

We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated is above *de minimis* (*i.e.,* 0.50 percent). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculate importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer-specific per-unit assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[13]

For U.S. entries that were not reported in the U.S. sales data submitted by Senmao, but that entered under Senmao's case number (*i.e.,* at Senmao's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the cash deposit rate for the China-wide entity (*i.e.,* 85.13 percent).[14] For the companies not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin calculated for Senmao in these final results of review.

Consistent with Commerce's assessment practice in non-market economy cases, for the companies which Commerce determined had no shipments of the subject merchandise, any suspended entries made under those exporters' case numbers (*i.e.,* at the exporters' rates) will be liquidated at the China-wide rate.[15]

[13] *See* 19 CFR 351.106(c)(2).

[14] See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017, 84 FR 38002, 38003 (August 5, 2019).

[15] For a full discussion of this practice, *see Assessment Notice.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for companies which were found eligible for a separate rate in this review, the cash deposit rate will be 37.29 percent; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a 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 the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

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, which continues to govern business proprietary information in this segment of the proceeding. 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.

This determination is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: June 24, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement & Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

No Shipments

Anhui Longhua Bamboo Product Co., Ltd.
Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd. (successor-in-interest to Scholar Home (Shanghai) New Material Co., Ltd.) [23]
Baroque Timber Industries (Zhongshan) Co., Ltd.
Benxi Wood Company
Dalian Deerfu Wooden Product Co., Ltd.
Dalian Jaenmaken Wood Industry Co., Ltd.
Dalian Jiahong Wood Industry Co., Ltd.
Dalian Shengyu Science And Technology Development Co., Ltd.
Dongtai Fuan Universal Dynamics, LLC
Dunhua City Dexin Wood Industry Co., Ltd.
Dunhua City Hongyuan Wood Industry Co., Ltd.
Dunhua City Jisen Wood Industry Co., Ltd.
Fine Furniture (Shanghai) Limited
HaiLin LinJing Wooden Products Co., Ltd.
Hunchun Xingjia Wooden Flooring Inc.
Huzhou Chenghang Wood Co., Ltd
Huzhou Fulinmen Imp. & Exp. Co., Ltd.
Huzhou Sunergy World Trade Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiangsu Mingle Flooring Co., Ltd
Jiangsu Simba Flooring Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan HuiJiaLe Decoration Material Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Jiaxing Hengtong Wood Co., Ltd.
Jilin Xinyuan Wooden Industry Co., Ltd.

Kember Flooring, Inc. (a.k.a. Kember Hardwood Flooring, Inc.)
Linyi Anying Wood Co., Ltd.
Linyi Youyou Wood Co., Ltd.
Muchsee Wood (Chuzhou) Co., Ltd.
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
Power Dekor Group Co., Ltd.
Sino-Maple (Jiangsu) Co., Ltd.
Suzhou Dongda Wood Co., Ltd.
Tongxiang Jisheng Import and Export Co., Ltd.
Yekalon Industry Inc.
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Dadongwu Greenhome Wood Co., Ltd.
Zhejiang Longsen Lumbering Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

Appendix III

China-Wide Entity

A&W (Shanghai) Woods Co., Ltd.
Anhui Boya Bamboo & Wood Products Co., Ltd.
Anhui Yaolong Bamboo & Wood Products Co. Ltd.
Armstrong Wood Products (Kunshan) Co., Ltd.
Armstrong World Industries Inc.
Changzhou Hawd Flooring Co., Ltd.
Chinafloors Timber (China) Co., Ltd.
Dalian Dajen Wood Co., Ltd.
Dalian Guhua Wooden Product Co., Ltd.
Dalian Huade Wood Product Co., Ltd.
Dalian Huilong Wooden Products Co., Ltd.
Dalian Kemian Wood Industry Co., Ltd.
Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Product Co., Ltd. (collectively, Fusong Jinlong Group)
Dalian T-Boom Wood Products Co., Ltd.
Guangzhou Homebon Timber Manufacturing Co., Ltd.
Guangzhou Panyu Kangda Board Co., Ltd.
Guangzhou Panyu Southern Star Co., Ltd.
Hangzhou Hanje Tec Company Limited
Hangzhou Zhengtian Industrial Co., Ltd.
Hunchun Forest Wolf Wooden Industry Co., Ltd.
Huzhou Jesonwood Co., Ltd.
Innomaster Home (Zhongshan) Co., Ltd.
Jiafeng Wood (Suzhou) Co., Ltd.
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
Karly Wood Product Limited
Kemian Wood Industry (Kunshan) Co., Ltd.
Linyi Bonn Flooring Manufacturing Co., Ltd.
Mudanjiang Bosen Wood Industry Co., Ltd.
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
Omni Arbor Solution Co., Ltd.
Power Dekor North America Inc.
Shandong Longteng Wood Co., Ltd.
Shanghai Lairunde Wood Co., Ltd.
Shanghaifloor Timber (Shanghai) Co., Ltd.
Shenyang Haobainian Wooden Co., Ltd.
Shenzhenshi Huanwei Woods Co., Ltd.
Xiamen Yung De Ornament Co., Ltd.
Xuzhou Antop International Trade Co., Ltd.
Xuzhou Shenghe Wood Co., Ltd.
Zhejiang Biyork Wood Co., Ltd.
Zhejiang Fudeli Timber Industry Co., Ltd.
Zhejiang Jiechen Wood Industry Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

Appendix IV

Non-Selected Companies Under Review Receiving a Separate Rate

Benxi Flooring Factory (General Partnership)
Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd.
Dun Hua Sen Tai Wood Co., Ltd.
Dunhua Shengda Wood Industry Co., Ltd
Jiangsu Guyu International Trading Co., Ltd
Kingman Wood Industry Co., Ltd.
Lauzon Distinctive Hardwood Flooring, Inc.
Metropolitan Hardwood Floors, Inc.
Zhejiang Fuerjia Wooden Co., Ltd.

[FR Doc. 2022–14124 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee; Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting of a Federal Advisory Committee.

SUMMARY: This notice sets forth the schedule and proposed topics for a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, July 26, 2022 from 10:00 a.m. to 1:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Tuesday, July 19, 2022.

ADDRESSES: The meeting will take place in the Research Library at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. Requests to register to participate in-person or virtually (including to speak or for auxiliary aids) and any written comments should be submitted via email to Ms. Victoria Yue, Office of Energy & Environmental Industries, International Trade Administration, at *Victoria.yue@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Yue, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–482–3492; email: *Victoria.yue@trade.gov*).

SUPPLEMENTARY INFORMATION: The meeting will take place on Tuesday, July 26, 2022 from 10:00 a.m. to 1:00 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Tuesday, July 19, 2022, at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Victoria Yue at *Victoria.Yue@trade.gov* or (202) 482–3492 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Tuesday, July 19, 2022, at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 90 days of this meeting.

Topics to be considered: At this final meeting of the current ETTAC charter (2020–2022), the ETTAC will present its recommendations to senior officials from the U.S. Department of Commerce, then interagency representatives of the Trade Promotion Coordinating Committee's Environmental Trade Working Group (TPCC ETWG) will respond to the recommendations that the ETTAC presented. The meeting will be co-chaired by senior officials from

the International Trade Administration and the U.S. Environmental Protection Agency. The ETTAC's recommendation letters can be found at *www.trade.gov/ettac*. The recommendations were developed by the ETTAC's three subcommittees: Trade Policy and Export Promotion, Climate Change Mitigation and Resilience Technologies; and Waste Management and Circular Economy. An agenda will be made available one week prior to the meeting upon request to Victoria Yue.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 15, 2022.

Dated: June 28, 2022.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2022–14133 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Advanced Spectrum and Communications Test Network: Citizens Broadband Radio Service Sharing Ecosystem Assessment

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The National Advanced Spectrum and Communications Test Network (NASCTN) is hosting a public meeting on NASCTN's next project, the 'Citizens Broadband Radio Service (CBRS) Sharing Ecosystem Assessment, on July 12, 2022 at 12:00 p.m.–1:30 p.m. Mountain Daylight Time. The purpose of this meeting is to bring together federal, industry, and academic stakeholders to disseminate information about NASCTN's next project.

DATES: The NASCTN meeting on the CBRS Sharing Ecosystem Assessment will take place on July 12, 2022 at 12:00 p.m.–1:30 p.m. Mountain Daylight Time.

ADDRESSES: The meeting will be held via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Matt Briel at *matthew.briel@nist.gov* or 303–908–2747.

SUPPLEMENTARY INFORMATION: The National Advanced Spectrum and Communications Test Network (NASCTN) is hosting a public meeting on the CBRS Sharing Ecosystem Assessment project on July 12, 2022 at 12:00 p.m.–1:30 p.m. MDT. The purpose of this meeting is to bring together federal, industry, and academic stakeholders to disseminate information about NASCTN's next project.

NASCTN's next project, the CBRS Sharing Ecosystem Assessment, seeks to provide data-driven insight into the CBRS sharing ecosystem's effectiveness between commercial and DoD radar systems, and to track changes in the spectrum environment over time. Individuals and representatives of organizations who would like to ask questions or offer suggestions related to the project are invited to request a place on the agenda.

Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. Public comments can be provided via email or by web conference attendance. The amount of time per speaker will be determined by the number of requests received. All those wishing to speak must submit their request by email to *matthew.briel@nist.gov* by 5:00 p.m. Mountain Daylight Time, July 8, 2022. Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements electronically by email to *matthew.briel@nist.gov.*

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Mountain Daylight Time, July 8, 2022. Please submit your full name, email address, and phone number to Matt Briel at *matthew.briel@nist.gov.*

Authority: 15 U.S.C. 272.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–14164 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC129]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Coast Guard's Floating Dock Extension Project at Base Ketchikan, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the United States Coast Guard (USCG) to incidentally harass marine mammals during construction of the floating dock extension at Base Ketchikan, Alaska.

DATES: This Authorization is effective from July 1, 2022, through June 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-united-states-coast-guards-floating-dock-extension-project.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed IHA may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on

the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 9, 2021, NMFS received a request from the USCG for an IHA to take marine mammals incidental to the construction of the floating dock extension at Base Ketchikan, Alaska. Following NMFS' review of the request, USCG provided additional information on July 22, 2021, and again on March 7, 2022. The application was deemed adequate and complete on the latter date. USCG's request is for take of ten species of marine mammals by Level B harassment and, for a subset of three species, by Level A harassment. Neither USCG nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

There have been no changes from the proposed to the final IHA.

Description of Activity

Overview

The USCG requested an IHA for activities associated with the construction of the Floating Dock Extension Project in the Tongass Narrows at Coast Guard Base Ketchikan (Base Ketchikan) in Ketchikan, Alaska. The project will cover a 12-month window during which approximately 30 days of pile-installation activity will occur. The project involves the installation of ten, 24-inch steel guide piles for a third floating dock section. Three different installation methods will be used including the Down-the-Hole (DTH) system to create rock sockets for new piles, vibratory installation of piles, and final pile proofing with limited use of impact pile driving. Sounds resulting from pile installation and drilling may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment.

Dates and Duration

The IHA is effective from July 1, 2022 through June 30, 2023. The total expected work duration will be 15 construction days (5 days of DTH, 5 days of vibratory pile installation, and 5 days of impact pile driving) with an additional 15 day buffer to account for days where work is paused (*e.g.,* inclement weather), for a total work window of 30 days. The USCG plans to conduct all work during daylight hours.

Specific Geographic Region

The activity will occur in the Tongass Narrows at Base Ketchikan in Ketchikan, Alaska (Figure 1). Base Ketchikan is located on the southwestern end of Revillagigedo Island, approximately 235 miles south of Juneau and 90 miles north of Prince Rupert, British Columbia. The Base is about 1 mile south of downtown Ketchikan, on the industrial limits of the city, and on the East Channel of the Tongass Narrows. The waters of the Tongass Narrows are heavily used by the public including cruise ships, commercial fishing vessels, and private craft and sea planes, which contribute significantly to the ambient acoustic environment in the Narrows.

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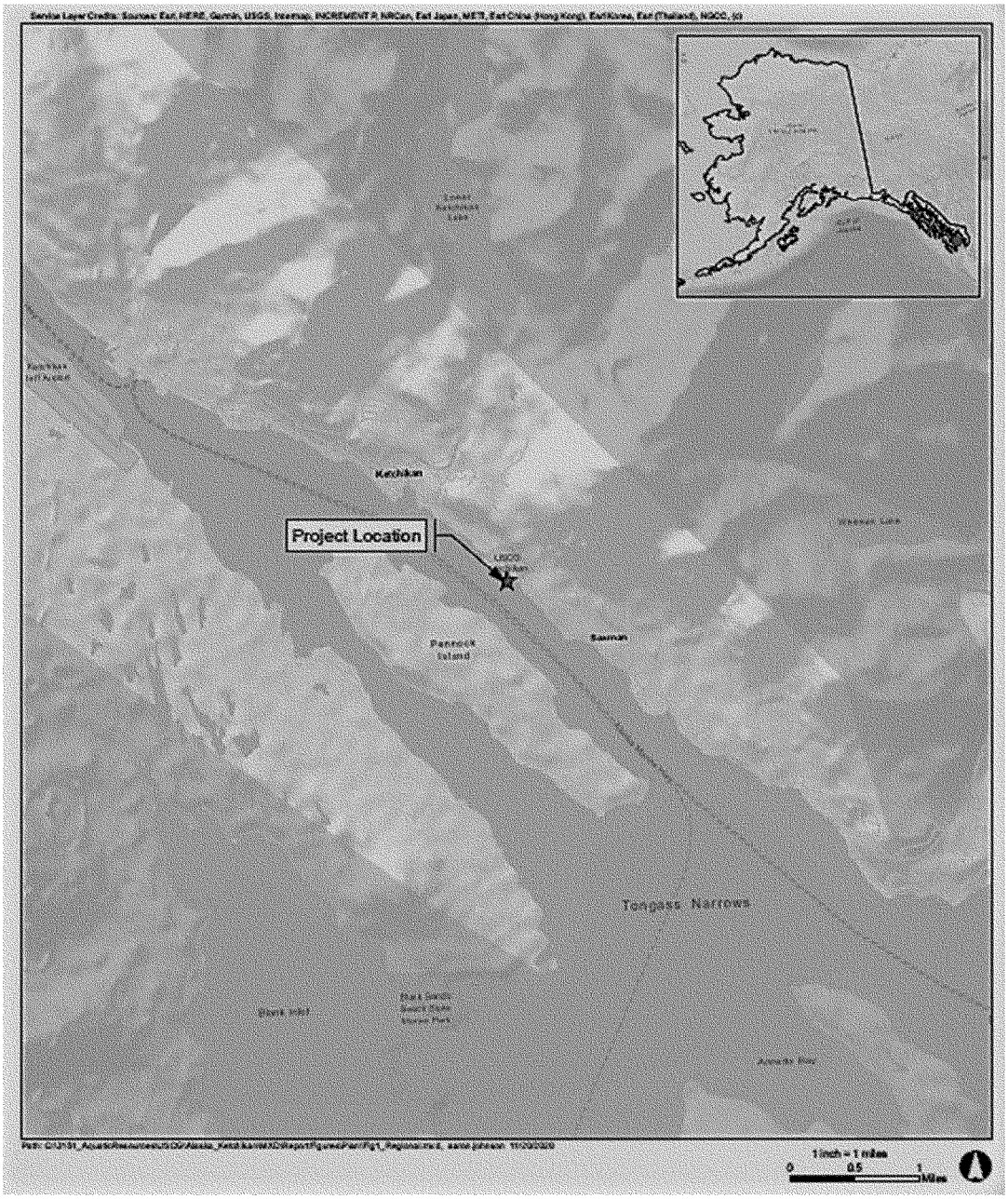

Figure 1. Map illustrating the project location at USCG Base Ketchikan.

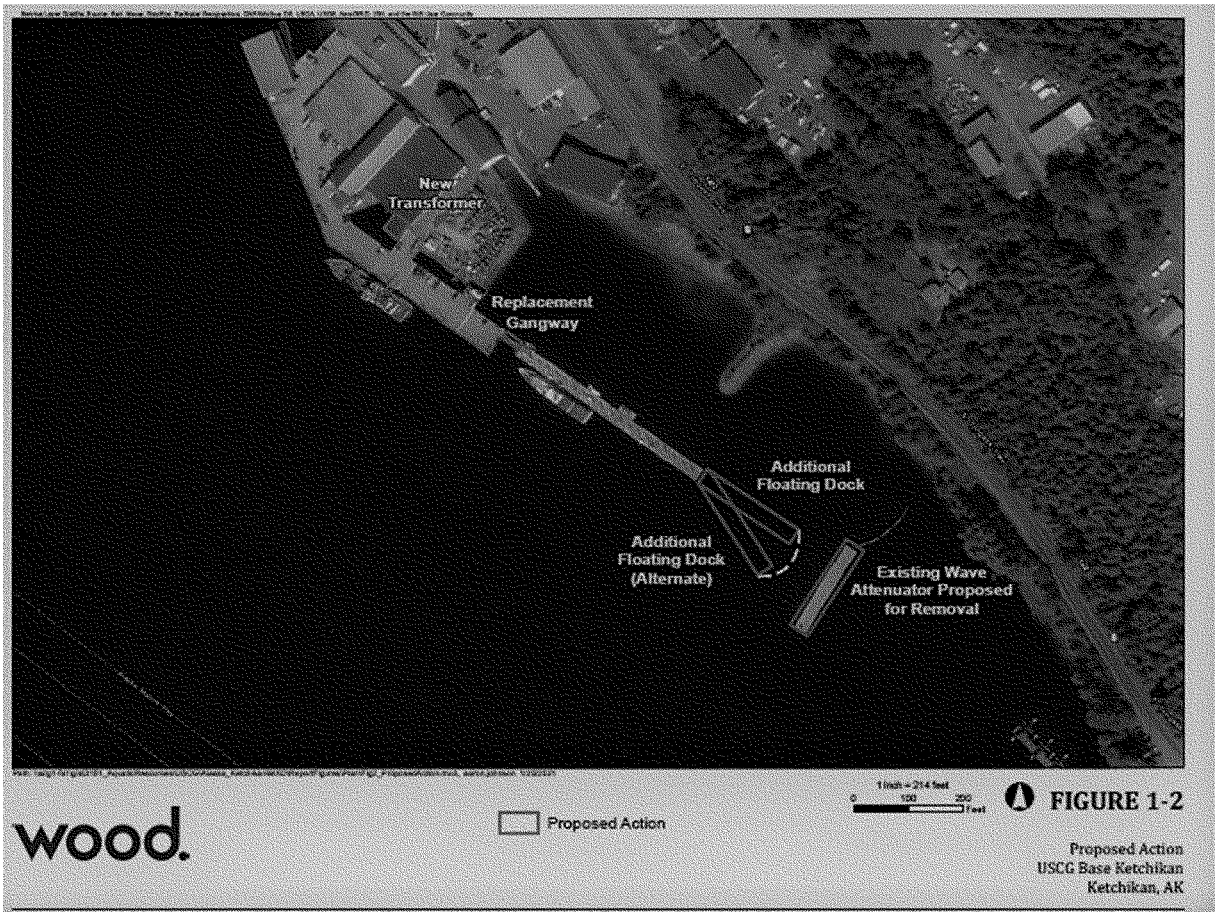

Figure 2. Map of USCG Base Ketchikan and floating dock extension components and actions.

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Detailed Description of Specific Activity

USCG plans to install ten steel guide piles for a third floating dock section at Base Ketchikan to support the homeporting of a third Fast Response Cutter (FRC) (Figure 2). The piles will be installed over a period of 30 days, allotting five construction days to each of the three methods of installation, in addition to 15 additional buffer days to account for unforeseen interruptions (*e.g.,* inclement weather). These methods include DTH, vibratory pile installation and pile proofing using an impact hammer (see Table 1).

TABLE 1—PILE INSTALLATION METHODS AND DURATIONS

Installation method	Duration/impacts per pile	Piles driven/day	Estimated days
DTH	60 minutes	2	5.
Vibratory pile installation	6 minutes	2	5.
Impact driving pile proofing	5 impacts	2	5 (10 strikes).
Total			15 (30).[1]

[1] The total expected work duration is 15 days with an additional 15 day buffer to account for days where work is paused (*e.g.,* inclement weather) for a total work window of 30 days.

A detailed description of the planned construction project was provided in the **Federal Register** notice for the proposed IHA (87 FR 30894; May 20, 2022). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to USCG was published in the

Federal Register on May 20, 2022 (87 FR 30894). That notice described, in detail, USCG's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

The United States Geological Survey provided a letter stating that it had no comment. No other comments were received.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Alaska Stock Abundance Reports (SARs) (*e.g.,* Muto et al., 2021). All values presented in Table 2 are the most recent available at the time of publication (including from the draft 2021 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific Stock	-,-,N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeanglinae*	Central North Pacific Stock	-,-,Y	10,103 (0.3, 7,890, 2006)	83	26
Minke whale	*Balaenoptera acutorostrata*	Alaska Stock	-,-,N	N/A (N/A, N/A, N/A) [4]	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orca orcinus*	Alaska Resident	-,-,N	2,347 (N/A, 2347, 2012)	24	1
		Northern Resident	-,-,N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-,-,N	349 (N/A, 349, 2018)	3.5	0.4
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens*	North Pacific Stock	-,-,N	26,880 (N/A, N/A,1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's porpoise [5]	*Phocoenoides dalli*	Alaska Stock	-,-,N	15,432 (0.097,13, 110, 2015)	131	37
Harbor porpoise [6]	*Phocoena phocoena*	Southeast Alaska Stock	-,-,Y	1302 (0.21, 1057, 2019)	11	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern Stock	-,-,N	43,201 (N/A, 43,201, 2017)	2592	112
Family Phocidae (earless seals):						
Harbor seal	*Phoca vituline richardii*	Clarence Strait Stock	-,-,N	27,659 (N/A, 24,854, 2015)	746	40
Northern Elephant seal	*Mirounga angustirostris*	California Breeding Stock	-,-,N	187,386 (N/A, 85,369, 2013)	5122	5.3

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] No population estimates have been made for the number of minke whales in the entire North Pacific. Some information is available on the numbers of minke whales on some areas of Alaska, but in the 2009, 2013 and 2015 offshore surveys, so few minke whales were seen during the surveys that a population estimate for the species in this area could not be determined (Rone *et al.,* 2017). Therefore, this information is N/A (not available).

[5] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

[6] Abundance estimates assumed that detection probability on the trackline was perfect; work is underway on a corrected estimate. Additionally, preliminary data results based on eDNA analysis show genetic differentiation between harbor porpoise in the northern and southern regions on the inland waters of southeast Alaska. Geographic delineation is not yet known. Data to evaluate population structure for harbor porpoise in Southeast Alaska have been collected and are currently being analyzed. Should the analysis identify different population structure than is currently reflected in the Alaska SARs, NMFS will consider how to best revise stock designations in the future.

As indicated above, all ten species (with twelve managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it. Fin whale could potentially occur in the area, however there are no known sightings nearby and USCG will shut down activity prior to a whale entering the harassment zones. Therefore, given the former and the rarity of the species, take is not expected to occur and they are not discussed further.

In addition, the northern sea otter (*Enhydra lutris kenyoni*) may be found in the Tongass Narrows. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by USCG's project, including brief introductions to species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 30894; May 20, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Navy's construction activities have the potential to result in harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (87 FR 30894; May 20, 2022) included a discussion of the effects of underwater noise from the USCG's activity on marine mammals and their habitat. That information and analysis is incorporated by reference into the final IHA determination and is not repeated here; please refer to the notice of proposed authorization (87 FR 30894; May 20, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for porpoises and harbor seals, due to the cryptic nature of these species in context of larger predicted auditory injury zones. Auditory injury is unlikely to occur for low- and mid-frequency species and otariids, based on the relatively small predicted zones for the latter two groups and because of the expected ease of detection for the former group. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. USCG's activity includes the use of continuous (vibratory hammer and DTH) and impulsive (DTH and impact pile-driving), and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USCG's activity includes the use of impulsive (impact pile-driving and DTH) and non-impulsive (vibratory hammer and DTH) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (Table 4).

TABLE 4—OBSERVED SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Activity	Peak SPL (re 1 µPa (rms))	RMS SPL (re 1 µPa (rms))	SEL (re 1 µPa (rms))	Source
DTH (24-inch Steel Pipe)	184	167	159	Heyvaert & Reyff, 2021.
Vibratory (24-inch Steel Pipe) *	175	162	160	Denes *et al.,* 2016.
Impact (24-Inch Steel Pipe)	207	194	178	Caltrans 2020.

Note: SELss = single strike sound exposure level; RMS = root mean square.

* Source levels used here differ from those used in USCG's application.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory and impact pile driving, vibratory removal and DTH, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and source levels used in the User Spreadsheet are reported in Table 4. Resulting isopleths are reported in Table 5.

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Activity	Level A harassment isopleths (PTS) (meters)					Level B harassment isopleths (m)
	LF	MF	HF	Phocids	Otariids	
DTH (24-inch Steel Pipe)	434.1	15.4	517.1	232.3	16.9	13594
Vibratory (24-inch Steel Pipe)	1	0.1	1.5	0.6	0.1	*6310
Impact (24-inch Steel Pipe)	21.5	0.8	25.6	11.5	0.8	1848

*Differs from USCG's application due to difference in source level use. See Table 4.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We also describe how the information provided above is brought together to produce a quantitative take estimate.

Available information regarding marine mammal occurrence and abundance in the vicinity of USCG Base Ketchikan includes monitoring reports from prior incidental take authorizations (the Tongass Narrows project (85 FR 673; January 7, 2020)) and ESA consultations on additional projects and is described below for each species. A summary of authorized take is in Table 6.

Steller Sea Lions

Steller sea lions are anticipated to occur in the vicinity of Base Ketchikan in the Tongass Narrows. As Base Ketchikan is far enough east of the line dividing the Eastern and Western stocks, only members of the Eastern Stock of Steller sea lions are anticipated to occur at Base Ketchikan. Sightings of Steller sea lions are expected to occur once a day with the total number of Steller sea lions in the project area reaching up to 10 animals. The project involves 30 days of potential in-water work. Therefore, we estimate total take at 10 sea lions × 30 days = 300 takes at the Level B harassment level. Because the shutdown zone is small and Steller sea lions are not cryptic, we believe the Level A harassment shutdown zone can be fully implemented by Protected Species Observers (PSOs) and no Level A harassment take is authorized.

Harbor Seal

Harbor seals are anticipated to occur in the project area once per day. The typical number of harbor seals observed in the project area is up to 12 animals per day. We estimate total take at 12 seals × 30 days of activity = 360 takes. Because of the relatively large Level A harassment zones for impact pile driving and DTH, and because harbor seals are small and cryptic species that could sometimes remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we authorize 10 takes (1 seal per day for the expected 10 days of impact pile driving and DTH) by Level A harassment, and 350 takes by Level B harassment, with total authorized take equal to 360.

Dall's Porpoise

Previous construction project monitoring in the Ketchikan area reported approximately two Dall's porpoises per day (NMFS, 2021). Therefore, we estimate total take at 2 porpoises per day × 30 days = 60 takes. Forty of these takes are expected to be Level B harassment takes. Because Dall's porpoises are small and cryptic species and could sometimes remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we authorize 20 takes by Level A harassment.

Harbor Porpoise

Harbor porpoises are expected to occur in the project area no more than three times per month and the typical group size for harbor porpoises in the project area is 5 animals. The project involves 30 days (1 month) of in-water work where take could occur. Therefore, we estimate total take at 5 porpoises × 3 sightings = 15 takes. Because harbor porpoises are small and cryptic species and could remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we authorize 5 takes by Level A harassment and 10 takes by Level B harassment.

Pacific White-Sided Dolphin

Previous construction project monitoring in the Ketchikan area reported approximately 2.86 Pacific white-sided dolphins per day (reported value of 20 dolphins over one week of monitoring) (NMFS, 2021). Therefore we estimate 2.86 dolphins × 30 days = 86 takes. All of these takes are expected to be by Level B harassment as we believe the Level A shutdown zones can be fully implemented by PSOs due to their large group size, short dive duration, and easy detection of Pacific white-sided dolphins, in addition to the smaller size of the shutdown zones.

Killer Whale

Killer whales are expected to occur in the project area no more than once per month. Typically a group size for killer whales in the project area is conservatively estimated at 10 animals, which equates to 0.4 animals per day. Therefore, we estimate total take at 0.4 whales × 30 days = 12 takes. All of these takes are expected to be Level B harassment takes as we believe the Level A shutdown zones can be fully implemented by PSOs because of the large size of the animal, short dive duration, and obvious behavior of killer whales, in additional to the small size of the shutdown zones.

Gray Whale

Gray whales are expected to occur no more than once per month. Typical group size for gray whales in the project area is two animals. Therefore, we conservatively authorize a single group size for the full 30 days of activity. All of these takes are expected to be by Level B harassment as we believe the Level A harassment shutdown zone can be fully implemented by PSOs because of the large size of the animal, short dive duration, and obvious behaviors of gray whales.

Minke Whales

Minke whales have not been previously observed in the project area but have a potential to occur. They are often solitary animals. Therefore, we conservatively authorize a single take of minke whales. This one estimated take is expected to be by Level B harassment as we believe the Level A shutdown zones can be fully implemented by PSOs because of the large size of the animal, the short dive duration, and obvious behaviors of minke whales.

Northern Elephant Seals

Members of the California breeding stock spend most of their time at sea and are known to migrate to the Gulf of Alaska to feed on benthic prey. Recent

anecdotal evidence has suggested that an animal may be present near Base Ketchikan and repeated sightings of that individual have been spotted near Ketchikan docks. Elephant seals are known to dive for extended periods of time and it is possible that one individual may be encountered within the Level B harassment zone. Therefore one estimated take by Level B harassment per day is authorized, bring the total authorized take of Elephant seals to 30. We believe the entire Level A shutdown zone can be fully implemented given their large size and obvious behaviors of elephant seals.

Humpback Whales

Members of the Western North Pacific stock have the potential to occur at Base Ketchikan. Previous construction project monitoring in the Ketchikan area reported approximately 0.571 whales per day during those activities (NMFS, 2021). Therefore, we estimate total take at 0.571 whales per day × 30 days = 17 takes by Level B harassment only. We do not anticipate any takes by Level A harassment as we believe the Level A shutdown zone can be fully implemented by PSOs because of their larger size, short dive duration, and obvious behaviors of humpback whales.

Given data in Wade *et al.,* (2021) discussed above on the relative frequencies of the Hawaii and Mexico DPS humpback whales in the project area, only 2 percent of the local population is expected to comprise of the Mexico DPS, equating to 0.34 of the 17 humpback whale takes for authorization. Therefore, no takes of Mexico DPS whales are expected to occur.

TABLE 6—AUTHORIZED AMOUNT OF TAKING

Species	Stock	Level A	Level B	Total	Percent of stock
Humpback whale	Central North Pacific	0	17	17	0.17
Minke whale	Alaska	0	1	1	N/A
Killer whale	Alaska Resident	0	12	12	0.51
	Northern Resident				3.97
	West Coast Transient				3.44
Pacific-white sided dolphin	North Pacific	0	86	86	0.32
Harbor porpoise	Southeast Alaska	5	10	15	0.13
Dall's porpoise	Alaska Stock	20	40	60	0.46
Gray whale	Eastern North Pacific	0	2	2	0.01
Harbor seal	Clarence Strait	10	340	360	1.30
Northern Elephant Seal	California Breeding Stock	0	30	30	0.00
Steller sea lion	Eastern	0	300	300	0.69

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

To ensure no take of any ESA listed whales, there are a number of mitigation measures required through the IHA that go beyond, or are in addition to, typical mitigation measures we would otherwise require for this project, as determined through informal ESA Section 7 consultation. The mitigation measures in the IHA include:

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions (note that NMFS expects that a 10 m shutdown zone is sufficient to avoid direct physical interaction with marine mammals, but USCG will implement a 20 m shutdown zone to avoid physical interaction for in-water activities);
- Ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and DTH will shut down immediately when the animals are sighted;
- Employ a minimum of three PSOs for all DTH and pile driving activities,

where one PSO is assigned to the active pile driving or DTH site to monitor shutdown zones and as much of the Level B harassment zones as possible. Two additional PSOs are required to start at the project site and travel along the Tongass Narrows, counting all humpback whales present, until they have reached the edge of the respective Level B harassment zone. At this point, the PSOs will identify suitable observation points from which to observe the width of Tongass Narrows for the duration of DTH and pile driving activities. For the largest zones, these are expected to be on South Tongass Highway near Mountain Point and North Tongass Highway just northwest of the intersection with Carlanna Creek.

- The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during activity;
- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH activity;
- If in-water work ceases for more than 30 minutes, USCG will conduct pre-clearance monitoring of both the Level B harassment zone and the shutdown zone;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 7 are clear of marine mammals. Pile driving and DTH may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;
- If a marine mammal is observed entering or within the shutdown zones indicated in Table 7, pile driving and DTH must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 7) or 15 minutes have passed without re-detection of the animal (30 minutes for large cetaceans);
- For humpback whales, if the boundaries of the harassment zone have not been monitored continuously during a work stoppage, the entire harassment zone will be surveyed again to ensure that no humpback whales have entered the harassment zone that were not previously accounted for; and
- In water activities will take place only: Between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less; when the entire shutdown zone and adjacent waters are visible (*e.g.,* monitoring effectiveness in not reduced due to rain, fog, snow, etc.). Pile driving may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

The following specific mitigation measures must also apply to USCG's in-water construction activities:

Establishment of Level A Harassment and Shutdown Zones—For all pile driving/removal and DTH activities, USCG will establish a shutdown zone (Table 7). The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones vary based on activity type and duration and marine mammal hearing group (Table 7). All shutdown zones are based on the Level A harassment isopleth for the associated activity. The placement of PSOs during all construction activities (described in detail in the Monitoring and Reporting Section) will ensure that the entire shutdown zones are visible during pile installation.

TABLE 7—SHUTDOWN ZONES AND LEVEL B HARASSMENT ISOPLETHS

Activity	Shutdown zone (m)					Level B harassment zone (m)
	Low-frequency	Mid-frequency	High-frequency	Phocid	Otariid	
Vibratory	20	20	20	20	20	13594
DTH	440	20	520	240	20	6310
Impact	30	20	30	20	20	1848

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual

marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance to the following:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued IHA. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA. Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. PSOs must be approved by NMFS prior to beginning any activity subject to this IHA; and
- PSOs must record all observations of marine mammals regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

USCG must employ three PSOs during all pile driving and DTH activities. A minimum of one PSO (the lead PSO) must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the Level B harassment zones as possible. Two additional PSOs are also required. The additional PSOs will start at the project site and travel along Tongass Narrows, counting all humpback whales present, until they have reached the edge of the respective Level B harassment zone. At this point, the PSOs will identify suitable observation points from which to observe the width of Tongass Narrows for the duration of DTH and pile driving activities. For the largest zones, these are expected to be on the South Tongass Highway near Mountain Point and north Tongass Highway just northwest of the intersection with Carlanna Creek. If visibility deteriorates so that the entire width of Tongass Narrows at the harassment zone boundary is not visible, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or are within the harassment zone are detected by PSOs.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory or DTH) and the total equipment duration for vibratory removal or DTH for each pile or hole or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones and shutdown zones; by species;
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any; and
- If visibility degrades to where PSO(s) cannot view the entire harassment zones, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or within the harassment zone are detected by PSOs.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional

Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 2 for which take could occur, given that NMFS expects the anticipated effects of pile driving/removal and DTH on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving and DTH activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The Level A harassment zones identified in Table 5 are based upon an animal exposed to impact pile driving or DTH up to two piles per day. Given the short duration to impact drive or vibe, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely give marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stock, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removals, and DTH at the sites in Tongass Narrows are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal and DTH will occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporary present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

For all species except humpback whales, there are no known Biologically Important Areas (BIAs) near the project area that would be impacted by USCG's planned activities. For humpback whales, the whole Southeast of Alaska is a seasonal BIA from March through November (Ferguson *et al.,* 2015), however, Tongass Narrows and the Clarence Strait are not important portions of this habitat due to human development and presence. The Tongass Narrows is also a small passageway and represents a very small portion of the total available habitat. In addition, while the southeast Alaska is considered an important area for feeding humpback whales between March and May (Ellison *et al.,* 2012), it is not currently designated as critical habitat for humpback whales (86 FR 21082; April 21, 2021).

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized.
- Authorized Level A harassment will be very small amounts and of low degree;
- The only known area of specific biological importance covers a broad area of southeast Alaska for humpback

whales, and the project area is a very small portion of that BIA. No other known areas of particular biological importance to any of the affected species or stocks are impacted by the activity, including ESA-designated critical habitat;

- For all species, the Tongass Narrows is a very small and peripheral part of their range;
- USCG will implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS;
- Monitoring reports from similar work in the Tongass Narrows have documented little to no effect on individuals of the same species impacted by the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than five percent of the abundance of the affected stocks, see Table 6). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified.

The most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals however this number just accounts for a portion of the stock's range. Therefore, the 60 takes of this stock authorized is believed to be an even smaller portion of the overall stock abundance.

Likewise, the Southeast Alaska stock of harbor porpoise has no official NMFS abundance estimate as the most recent estimate is greater than eight years old. The most recent estimate was 11,146 animal (Muto *et al.,* 2021) and it is highly unlikely this number has drastically declined. Therefore, the 15 takes of this stock authorized clearly represent small numbers of this stock.

There is no current or historical estimate of the Alaska minke whale stock, but there are known to be over 1,000 minke whales in the Gulf of Alaska (Muto *et al.,* 2018) so the 1 take authorized clearly represents small numbers of this stock. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and USCG's project area impacts a very small portion of this range. Therefore, the singular take of minke whale authorized is small relative to estimated survey abundance, even if each take occurred to a new individual.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Alaska Native hunters in the Ketchikan vicinity do not traditionally harvest cetaceans (Muto *et al.,* 2021). To date, there are no reports of subsistence takes of killer whale, Pacific white-sided dolphin, harbor porpoise, or Dall's porpoise within Alaska (Muto *et al.,* 2021). Harbor seals are the most commonly targeted marine mammal that is hunted by Alaska Native subsistence hunters within the Ketchikan area. In 2012, an estimated 595 harbor seals were taken for subsistence uses, with 22 of those occurring in Ketchikan (Wolfe *et al.,* 2013). Statewide data are no longer being consistently collected for subsistence harvest of Steller sea lions, however subarea collect does occur periodically. In 2012, hunters in Southeast Alaska took an estimated nine sea lions for subsistence use (Wolfe *et al.,* 2013). Sea lions were taken in two communities (Hoonah and Sitka) by three hunters. There are no known haulout locations in the project area. Both the harbor seal and Steller sea lion may be temporarily displaced from the action are However, neither the local population nor any individual pinniped are likely to be adversely impacted by the action beyond noise-induced harassment or slight injury. The project is anticipated to have no long-term impacts on either species' populations, or their habitats. No long-term impacts on the availability of marine mammals for subsistence uses is anticipated.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from USCG's activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to the United States Coast Guard for the potential harassment of small numbers of ten marine mammal species incidental to the floating dock extension construction project at Base Ketchikan, Alaska, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: June 28, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC102]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sand Island Pile Dikes Repairs in the Columbia River

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

ACTION: Notice; proposed incidental harassment authorizations (IHAs); request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers (Corps) for authorization to take marine mammals incidental to the Sand Island Pile Dikes Repairs Project in the Columbia River. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive IHAs to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, one-year renewals for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 1, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process

or making a final decision on the IHA request.

Summary of Request

On March 4, 2022, NMFS received a request from the Corps for two IHAs to take marine mammals incidental to the Sand Island Pile Dikes Repairs Project in the Columbia River over the course of two years. The application was deemed adequate and complete on June 9, 2022. The Corps' request is for take of 7 species of marine mammals by Level B harassment and, for a subset of these species (harbor seal (*Phoca vitulina*) and harbor porpoise (*Phocoena phocoena*)), Level A harassment. Neither the Corps nor NMFS expect serious injury or mortality to result from these activities and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

The Sand Island pile dikes are part of the Columbia River pile dike system and are comprised of 4 pile dikes, which are named according to river mile (RM) location, at RMs 4.01, 4.47, 5.15, and 6.37. The purpose of the Sand Island Pile Dikes Repairs project is to perform needed repairs. The existing timber pile dikes at Sand Island consist of three rows of vertical timber pilings between 12 and 20 inches (in) in diameter with two rows of horizontal spreaders, which provide structural stability of the vertical timber pilings. A cluster of piles with one or more taller piles, called an outer dolphin with king piles, is used to anchor and mark the end for navigational safety. There is rock apron at the base of the vertical piles and at the shore connection to protect against scour. The existing pile dikes have deteriorated greatly due to lack of maintenance.

It was determined that at the channel-ward ends of the pile dikes, replacement of the existing, deteriorated piles with new piles is necessary but that in shallower water depths, it is possible to remove timber pilings completely and add rock for higher enrockment elevation to achieve equivalent hydraulic and sediment transport functions. The project design team also determined that steel piles can provide equivalent hydraulic function and do not require horizontal spreaders, thus reducing required construction materials. In addition it is feasible to cap steel piles with cones to discourage piscivorous bird perching.

The major project elements proposed to be conducted under these IHAs include work at pile dikes 6.37 and 5.15. The Corps proposes to remove existing timber piles, drive new steel pipe piles and place rock for multiple purposes including scour protection at the base of the new piles, enhanced enrockment segments, shore connections, and revetment along the western portion of the shoreline at East Sand Island.

Dates and Duration

The Sand Island Pile Dikes Repairs Project is planned to take a total of 3 or 4 years to complete, with in-water work beginning in August 2023. The first IHA would be valid from August 1, 2023 to July 31, 2024, and the second would be valid August 1, 2024 through July 31, 2025, but in-water work would only occur between August and November each year. The Corps would apply separately for the future IHA(s) to conduct similar work at pile dikes 4.01 and 4.47.

Specific Geographic Region

One of the pile dikes is connected to West Sand Island (4.01), two of the pile dikes are connected to East Sand Island (4.47, 5.15), and the fourth pile dike (6.37) is in open water and runs parallel to the Chinook Federal Navigation Channel on the upstream side. The three pile dikes connected to West Sand Island and East Sand Island are located within Oregon, while the fourth pile dike in open water spans both Oregon and Washington. The Sand Island pile dikes are located in the downstream terminus of the Columbia River tidal estuary, which is dominated by freshwater inputs from the Columbia and Willamette rivers. This estuary stretches from the mouth upstream to Bonneville Dam at RM 146.

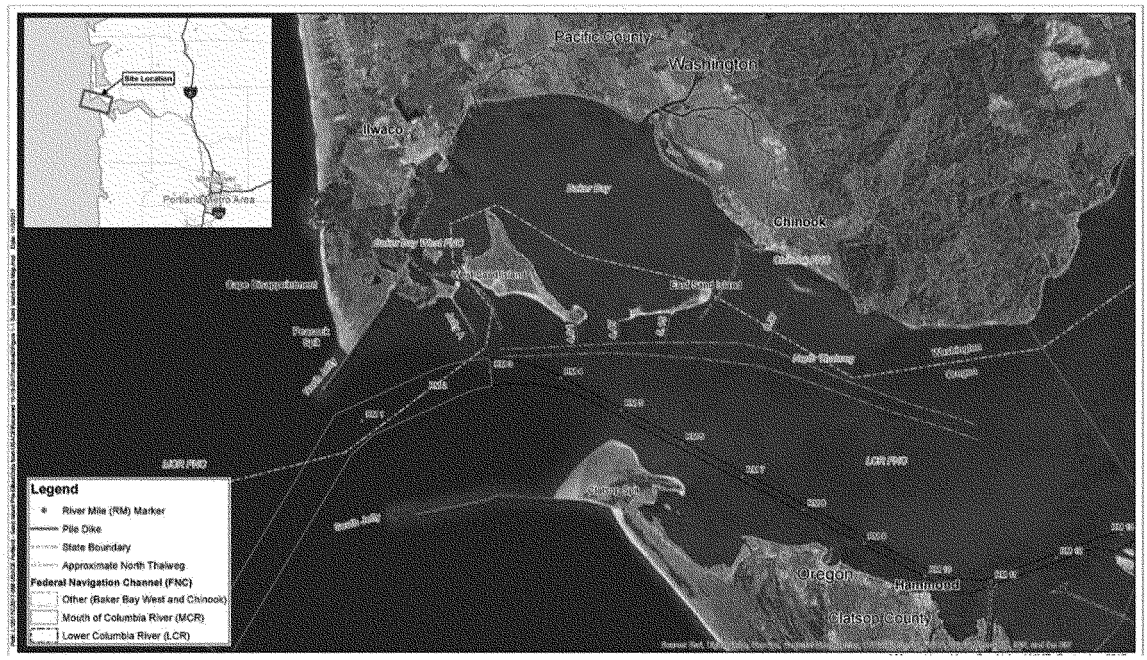

Figure 1. Location of Sand Island Pile Dikes

Detailed Description of Specific Activity

Hydraulic modeling of the Sand Island Pile Dike System demonstrated that existing timber piles would need to be removed because leaving them in place would affect the hydraulic function of the new design. Existing timber piles may be removed by pulling, cutting or snapping at the approximate level of the enrockment. Vibratory hammers will not be used for timber pile removal. Pile removal is expected to proceed incrementally as replacement repairs are made to ensure that overall function is maintained during construction. The original construction of the four pile dikes included 3,936 timber piles. It is estimated that 20 percent of those are now missing and that approximately 3,000 will be removed and disposed of. Take of marine mammals is not expected to occur from removal of timber piles, therefore the Corps has not calculated the precise number of piles to be removed and removal of timber piles will not be discussed further in this document.

The proposed pile dike design is an offset of the existing pile dike alignment, with piles driven approximately 30 feet (ft; 9.1 meters (m)) downstream of existing centerline. The pile configuration needed to achieve hydraulic and sediment transport functions includes two rows of 24'' steel pipe piles, staggered and spaced 6.2 ft (1.9 m) on center. Each pile dike would be 80 ft (24.4 m) long.

The Corps estimates a total of 376 24-in steel pipe piles would be installed at the two pile dike locations (pile dikes 6.37 and 5.15) and 18 24-in steel pipe piles will be installed as marker piles along the enrockment at these two pile dikes (Tables 1 and 2). The expected minimum embedment depths for each pile are between approximately 30 and 40 ft (9.1 to 12.2 m).

The contractor may use barge-mounted cranes equipped with survey grade positioning software to ensure the piles are installed with precision. Piles are generally installed by a rig which supports the pile leads, raises the pile, and operates a hammer. The Corps anticipates that vibratory hammers would be used to start the pile driving and will drive them 50 percent of the way, and impact hammers would be used to complete the pile driving for the remaining 50 percent. In the event that unusually difficult driving conditions are encountered, the contractor would be allowed to temporarily excavate the minimum amount of existing scour protection rock needed in order to drive the new pile. The contractor would then reinstall the rock to provide scour protection for the new pile.

Land based work would be necessary at pile dike 5.15 to remove some existing timber piles and improve the existing pile dike shore connections and sections of enhanced enrockment that are too shallow for barge-based equipment access. Construction of pile dike 6.37 would occur by over-water equipment only. Conceptual locations for a temporary material off-loading facility (MOF) and staging areas have been chosen based upon multiple constraints including cultural resources, avian presence, ordinary high water depths, and tidal currents, especially during ebb tide. Approaching and landing a barge may not be feasible or safe during some periods of the day during high tidal velocities. The MOF pilings supporting dolphins would be installed by barge using vibratory pile driving only. It is estimated that a maximum of 24 steel pipe piles with a maximum diameter of 24 inch and up to 100 (24-inch) AZ steel sheet piles would be required for the MOF. All piles installed to construct the MOF would be subsequently removed in the same year.

TABLE 1—YEAR 1 PROPOSED PILE DRIVING

Project element	Pile size and type	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Estimated days of work	Estimated month of work
Pile dike 6.37	24-in steel pipe	Vibratory install	171[a]	[b]14	15 minutes	56	August–September.
Pile dike 6.37	24-in steel pipe	Impact install			225 strikes.		
MOF	24-in steel pipe	Vibratory install	Up to 24[c]	5	30 minutes	5	October.
MOF	24-in steel pipe	Vibratory removal		20	5 minutes	1	October.
MOF	24-in steel sheet	Vibratory install	Up to 100[c]	25	10 minutes	4	October.
MOF	24-in steel sheet	Vibratory removal		50	3 minutes	1	October.
Total days of work						67	

[a] A total of 244 steel pipe piles will be installed at PD 6.37 over the two years, with approximately 70 percent installed in year 1 and the remaining 30 percent installed in year 2. These same 171 piles will be installed using both vibratory and impact hammers.
[b] The Corps estimates an average of 5 piles will be installed per day but could be up to 14 per day.
[c] The same MOF piles will be installed and subsequently removed.

TABLE 2—YEAR 2 PROPOSED PILE DRIVING

Project element	Pile size and type	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Estimated days of work	Estimated month of work
Pile dike 6.37	24-in steel pipe	Vibratory install Impact install	73[a]	[b]14	15 min 225 strikes.	24	August.
Pile dike 5.15	24-in steel pipe	Vibratory install Impact install	150	14	15 min 225 strikes.	71	August–November.
Total days of work						95	

[a] These same 73 piles will be installed using both vibratory and impact hammers.
[b] The Corps estimates an average of 5 piles will be installed per day but could be up to 14 per day.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information.

Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.,* 2021; Muto *et al.,* 2022) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	E, D, Y	4,973 (0.05, 4,776, 2018)	28.7	≥48.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	West Coast Transient	-,-, N	349 [4] (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	-,-, N	21,487 (0.44, 15,123, 2011).	151	≥3.0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S.	-,-, N	257,606 (N/A,233,515, 2014).	14,011	>320
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-, N	43,201 [5] (see SAR, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coast	-,-, N	24,732 [6] (UNK, UNK, 1999)	UND	10.6
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-,-, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Based on counts of individual animals identified from photo-identification catalogues. Surveys for abundance estimates of these stocks are conducted infrequently.

[5] Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

[6] The abundance estimate for this stock is greater than eight years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

As indicated above, all 6 species (with 6 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project area are included in Table 4 of the IHA application. While gray whales (*Eschrichtius robustus*) and killer whales from the Southern Resident Distinct Population Segment (DPS) and stock have been reported near the mouth of the Columbia River, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Gray whales have not been documented near the proposed project area although anecdotal evidence indicates they have been seen at the mouth of the Columbia River. However, they are not a common visitor as they mostly remain in the vicinity of the offshore shelf-break (Griffith 2015). They migrate along the Oregon coast in three discernible phases from early December through May (Herzing and Mate 1984). Therefore, they are unlikely

to occur near the project area between August and November. Monitoring reports from recent IHAs issued to the Corps for similar construction work on the Columbia River Jetty System (*e.g.,* 82 FR 15046; March 23, 2017) reported no observations of gray whales. Given the size of gray whales, they could be readily identifiable at a considerable distance. If a gray whale were to approach the established Level B harassment isopleths, shutdown would be initiated to avoid take. The Corps would employ at least one vessel-based protected species observer (PSO) who would be able to adequately monitor these zones. Therefore, NMFS does expect take of gray whales to occur and no take is proposed to be authorized.

Historically, killer whales were regular visitors in the vicinity of the estuary. However, they are much less common presently and are rarely seen in the interior of the Columbia River Jetty system (Wilson 2015). Southern Resident killer whales have been documented near the mouth of the Columbia River but these observations have most commonly been during the late-winter to early-spring months (NMFS 2021), outside of the proposed construction window for these projects. Monitoring reports from recent IHAs issued to the Corps for similar construction work on the Columbia River Jetty System (*e.g.,* 82 FR 15046; March 23, 2017) reported no observations of killer whales. While it is possible that killer whales from the West Coast Transient stock may enter the project area (see Estimated Take section), it is unlikely that take of Southern Resident killer whales would occur, and no take is proposed to be authorized.

Humpback Whale

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS delineated 14 distinct population segments (DPSs) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA that overlap with endangered or threatened DPSs to be depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status). All humpback whales in the project area would be from the California/Oregon/Washington stock (Carretta *et al.,* 2019). These animals belong almost exclusively to the Mexican and Central American DPSs, which are listed as threatened and endangered under the ESA, respectively. According to Wade *et al.* (2021), the probability that humpback whales encountered in Oregon and California (*i.e.,* south of the Columbia River) are as follows: Mexico DPS, 58 percent; and Central America DPS, 42 percent. In Washington and Southern British Columbia waters (*i.e.,* north of the Columbia River) are as follows: Hawai'i DPS (unlisted), 69 percent; Mexico DPS, 25 percent; and Central America DPS, 6 percent (Wade *et al.,* 2021). Since the Columbia River is considered the dividing line between these two areas, the exact proportion of humpback whales taken incidental to the Corps' activities from each of the three DPSs cannot be determined; however, we assume some of the humpback whales taken would be from a listed DPS.

Humpback whales are primarily found on the continental shelf and slope (Adams *et al.,* 2014). Humpback whales are typically seen off the Oregon coast from April to October, with peak numbers from June through August (Green *et al.,* 1991). Humpback whale feeding groups have begun utilizing the mouth of the Columbia River as foraging ground, arriving in the lower Columbia estuary as early as mid-June, and have been observed as late as mid-November with a peak of abundance coinciding with the peak abundance of forage fish in mid-summer. Humpback whales were observed in the immediate vicinity of West and East Sand Islands in late summer and fall of 2015 and 2016 (The Columbian, 2016). They were also observed in the area in 2017 and 2019, but their presence was not documented there in 2018 (The Columbian, 2019). Most recently they were again seen earlier in the season than ever, at the beginning of April in 2020 (Chinook Observer, 2020). Based on this information, it is possible that humpback whales may pass through and may forage intermittently in the immediate project vicinity.

Killer Whale

Killer whales are found in waters throughout the North Pacific. Along the west coast of North America, 'resident,' transient,' and 'offshore' ecotypes have overlapping distributions and multiple stocks are recognized within that broader classification scheme. The West Coast Transient stock includes animals that range from California to southern Alaska, and is genetically distinct from other transient populations in the region (*i.e.,* Gulf of Alaska, Aleutian Islands, and Bering Sea transients and AT1 transients) (Carretta *et al.,* 2021; Muto *et al.,* 2021). The main diet of transient killer whales consists of marine mammals. Along the Washington and Oregon coast, transient killer whales primarily hunt pinnipeds and porpoises, though some groups will occasionally target larger whales. The seasonal movements of transients are largely unpredictable, although there is a tendency to investigate harbor seal haulouts off Vancouver Island more frequently during the pupping season in August and September (Baird 1994; Ford 2014). While not regularly seen in the project area, transient killer whales have been observed near the mouth of the Columbia River in March and April and a pod of transient killer whales were detected near the Astoria Bridge in May of 2018 (Frankowicz 2018).

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Barrow, along the Alaskan coast, and down the west coast of North America to Point Conception, California. Harbor porpoise are known to occur year-round in the inland trans-boundary waters of Washington and British Columbia, Canada and along the Oregon/Washington coast. The Northern Oregon/Washington Coast stock of harbor porpoises ranges from Lincoln City, OR, to Cape Flattery, WA (Carretta *et al.,* 2019).

Harbor porpoises are usually found in shallow water, most often nearshore, although they occasionally travel over deeper offshore waters (NOAA 2013a). West Coast populations have more restricted movements and do not migrate as much as East Coast populations (Halpin, OBIS–SEAMAP 2019). Most harbor porpoise groups are small, generally consisting of less than five or six individuals, though for feeding or migration they may aggregate into large, loose groups of 50 to several hundred animals (Halpin, OBIS–SEAMAP 2019). Behavior tends to be inconspicuous, compared to most dolphins, and they feed by seizing prey which consists of wide variety of fish and cephalopods ranging from benthic or demersal (Halpern, OBIS–SEAMAP 2019). Harbor porpoises are sighted year round near the mouth of the Columbia River (Griffith 2015). Their abundance peaks with the abundance of anchovy presence in the river and nearshore.

California Sea Lion

California sea lions are found along the west coast from the southern tip of Baja California to southeast Alaska. They breed mainly on offshore islands from Southern California's Channel Islands south to Mexico. Non-breeding males often roam north in spring foraging for food. Since the mid-1980s, increasing numbers of California sea lions have been documented feeding on fish along the Washington coast and—more recently—in the Columbia River as far upstream as Bonneville Dam, 145 mi (233 km) from the river mouth. Large numbers of California sea lions use the nearby South Jetty for hauling out (Jeffries 2000). According to Oregon Department of Fish and Wildlife (ODFW 2014) counts, most California sea lions are concentrated near the tip of the South Jetty. ODFW survey information (2007 and 2014) indicates that California sea lions are relatively less prevalent in the Pacific Northwest during June and July, though in the months just before and after their absence there can be several hundred using the South Jetty. More frequent Washington Department of Fish and Wildlife (WDFW 2014) surveys indicate greater numbers in the summer, and use remains concentrated to fall and winter months. Nearly all California sea lions in the Pacific Northwest are sub-adult and adult males (females and young generally stay in California).

Steller Sea Lion

The range of the Steller sea lion includes the North Pacific Ocean rim from California to northern Japan. Steller sea lions forage in nearshore and pelagic waters where they are opportunistic predators. There are two separate stocks of Steller sea lions, the Eastern U.S. stock, which occurs east of Cape Suckling, Alaska (144° W), and the Western U.S. stock, which occurs west of that point. Only the Western stock of Steller sea lions, which is designated as the Western DPS of Steller sea lions, is listed as endangered under the ESA (78 FR 66139; November 4, 2013). Unlike the Western U.S. stock of Steller sea lions, there has been a sustained and robust increase in abundance of the Eastern U.S. stock throughout its breeding range. The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California.

Large numbers of Steller sea lions use the nearby South Jetty for hauling out (Jeffries 2000) and are present, in varying abundances, all year. Use occurs chiefly at the concrete block structure at the terminus, or head of the jetty. According to ODFW (2014), during the summer months it is not uncommon to observe between 500–1,000 Steller sea lions present per day. Steller sea lions are most abundant in the vicinity during the winter months and tend to disperse elsewhere to rookeries during breeding season between May and July (Corps 2007). All population age classes, and both males and females, use the South Jetty to haul out.

While California sea lions also use this area and can intermingle with Steller sea lions, it appears that Steller out-compete California sea lions for the preferred haul out area. Previous monthly averages between 1995 and 2004 for Steller sea lions hauled out at the South Jetty head ranged from about 168 to 1,106 animals. ODFW data from 2000–2014 reflects a lower frequency of surveys, and numbers ranged from zero animals to 606 Steller sea lions (ODFW 2014). More frequent surveys by WDFW for the same time frame (2000–2014) put the monthly range at 177 to 1,663 animals throughout the year.

Pacific Harbor Seal

Harbor seals range from Baja California, north along the western coasts of the United States, British Columbia and southeast Alaska, west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands, and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They are one of the most abundant pinnipeds in Oregon and can typically be found in coastal marine and estuarine waters of the Oregon coast throughout the year. On land, they can be found on offshore rocks and islands, along shore, and on exposed flats in the estuary (Harvey 1987). In 2002, the estimated absolute abundance of harbor seals on the Oregon coast (excluding Hunters Island) was 10,087 (95 percent confidence interval: 8,445–12,046) animals (Brown *et al.,* 2005). Harbor seals are known to use the Chinook Channel/Baker Bay area during low tides for hauling out (Jeffries 2000). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction. Harbor seals do not make extensive pelagic migrations (Carretta *et al.,* 2019). The most recent estimated population of harbor seals in the Oregon/Washington Coast stock was 24,732 based on surveys conducted in 1999 (Carretta *et al.,* 2014). Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon portions of this stock were reported as reaching carrying capacity. However, in the absence of recent abundance estimates, the current population trend is unknown.

Northern Elephant Seal

The California Breeding Stock of Northern elephant seals (Mirounga angustirostris) breeds and gives birth in California, but makes extended foraging trips to areas including coastal Oregon biannually during the fall and spring (Le Boeuf *et al.,* 2000). They spend about 90 percent of their time at sea underwater, making sequential deep dives. While both males and females may transit areas off the Oregon coast, males seem to have focal forage areas near the continental shelf break while females typically move further offshore and feed opportunistically at numerous sites while in route (Le Beouf *et al.,* 2000). Prior to 1984, only two sightings of Northern elephant seals were recorded (Jeffries 1984). Since then, they have been seen infrequently near the mouth of the Columbia River.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory driving and removal. The effects of underwater noise from the Corps' proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action areas.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of hammers would be used on this project, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces SPLs 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the Corps' proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to

primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile installation and removal (*i.e.,* impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the Corps' specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. No physiological effects other than PTS are anticipated or proposed to be authorized, and therefore are not discussed further.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles for this project requires impact pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in species, activities, and habitat (*e.g.,* cool-temperate waters, industrialized area), we expect similar behavioral responses from the same and similar species affected by the Corps' specified activities. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was

associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The mouth of the Columbia River area contains active commercial shipping and commercial fishing as well as numerous recreational and other commercial vessels, and background sound levels in the area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The Corps' proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). The sediments of the project site will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the lower Columbia River. The area is highly influenced by anthropogenic activities. The total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish or, in the case of transient killer whales, other marine mammals) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In-water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey other than other marine mammals (which have been discussed earlier).

Fish utilize the soundscape and components of sound in their

environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2015).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project areas. Forage fish form a significant prey base for many marine mammal species that occur in the project areas. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in Elliott Bay are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment (in the form of behavioral disturbance and TTS), as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and removal) have the potential to result in disruption of behavioral patterns and cause a temporary loss in hearing sensitivity for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for porpoises and harbor seals because predicted auditory injury zones are larger. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals

would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Corps' proposed activities includes the use of continuous (vibratory hammer) and impulsive (impact hammer) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Corps' activities include the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes, and methods the Corps proposes to use (Table 6).

TABLE 6—SOURCE LEVELS

Pile type and method	Source level (dB re 1 μPa)			Reference
	Peak	RMS	SEL	
24-in steel pipe impact installation	203 dB	190 dB	177 dB	CalTrans (2015).
24-in steel pipe pile vibratory installation/removal.	Not available	161 dB	Not available	U.S. Navy (2015).
24-in steel sheet pile vibratory installation/removal.	175 dB	160 dB	160 dB	CalTrans (2015).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2), where
TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Corps' proposed activities in the absence of specific modelling. The Level B harassment zones for the Corps' proposed activities are shown in Table 7.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Tables 1 and 2, and the resulting isopleths are reported below in Table 7. Due to the bathymetry and geography of the project areas, sound may not reach the full distance of the harassment isopleths in all directions.

TABLE 7—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES

Pile type and method	Level A harassment zone (m)					Level B harassment zone (m)
	LF Cetacean	MF Cetacean	HF Cetacean	Phocid pinniped	Otariid pinniped	
24-in Steel Pile Impact Installation	430.0	15.3	512.2	230.1	16.8	1,000
24-in Steel Pile Vibratory Installation	7.9	0.7	11.7	4.8	0.3	5,412
Steel Sheet Pile Vibratory Installation	36.8	3.3	54.4	22.4	1.6	4,642
Steel Sheet Pile Vibratory Removal	9.6	0.9	14.2	5.8	0.4	4,642

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the proposed take incidental to the Corps' pile driving activities. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. Unless otherwise specified, the occurrence information described below is used to estimate take for both the Year 1 and Year 2 IHAs. NMFS has carefully reviewed the Corps' analysis and concludes that it represents an appropriate and accurate method for estimating incidental take caused by the Corps' activities.

Steller Sea Lion, California Sea Lion, and Harbor Seal

For Steller sea lions, California sea lions, and harbor seals, the numbers of individuals were referenced from WDFW's surveys from 2000–2014 at the South Jetty for the months of in water work (August through October) and averaged to get an estimated daily count (Table 8). While animals were surveyed at the prominent haul out site along the South Jetty, since the Sand Island pile dikes are very close to the mouth of the river and the South Jetty, the Corps assumed each of these estimates represent the total number of individuals present in the project vicinity. In instances where proposed activities will occur over a span of two or more months, the Corps derived potential take estimates from the average abundance recorded over the specified period. For harbor seals, where abundance was only estimated in July, the Corps used that estimate for all projections.

TABLE 8—PINNIPED COUNTS FROM THE SOUTH JETTY FROM 2000–2014

[WDFW 2014]

	Steller sea lion	California sea lion	Harbor seal
August	324	115	57
Average August–September	267	182	57
September	209	249	57
October	384	508	57
Average (all months)	306	291	57

To calculate the total estimated takes by Level B harassment, the Corps multiplied the estimated days of activity within each month (or total across months) by the associated monthly (or average across months) count of each species (Table 9).

TABLE 9—ESTIMATED TAKE OF STELLER SEA LIONS, CALIFORNIA SEA LIONS, AND HARBOR SEALS BY LEVEL B HARASSMENT

Project element	Month(s)	Days of pile driving in month(s)	Steller sea lion average count	Steller sea lion calculated take	California sea lion average count	California sea lion calculate take	Harbor seal average count	Harbor seal calculated take
Year 1:								
Pile Dike 6.37 ...	August–September	56	267	14,952	182	10,192	57	3,192
MOF	October	11	384	4,224	508	5,588	57	627
Total takes by Level B harassment				19,176	Total:	15,780	Total:	3,819
Year 2:								
Pile Dike 6.37 ...	August	24	324	7,776	115	2,760	57	1,368
Pile Dike 5.15 ...	August through October.	71	306	21,726	291	20,661	57	4,047
Total takes by Level B harassment				29,502	Total:	23,421	Total:	5,415

Based on the relative proportion of the area expected to be ensonified above the Level A harassment threshold for phocid pinnipeds from impact pile driving of 24-in steel pipe piles (approximately 0.23 square kilometers (km^2)) to the area ensonified above the Level B harassment threshold (up to 94 km^2 for vibratory installation of 24-in steel pipe piles), the Corps estimated that of the total number of harbor seals that may be located within the greater Level B harassment zone, no more than 1 percent would approach the pile driving activities closer and enter the smaller Level A harassment zone (231 m). Thus the Corps assumes that 1 percent of the total estimated takes of harbor seals (3,819 individuals in Year 1 and 5,415 individuals in Year 2; see Table 9) would be by Level A harassment. Therefore, the Corps has requested, and NMFS is proposing to authorize, 38 takes of harbor seals by Level A harassment and 3,781 takes by Level B harassment in Year 1 and 54 takes of harbor seals by Level A harassment and 5,361 takes by Level B harassment in Year 2 (Table 10).

The largest Level A harassment zone for otariid pinnipeds is 16.8 m. The Corps would be required to enforce a minimum shutdown zone of 25 m for these species. At that close range, the Corps would be able to detect California sea lions and Steller sea lions and implement the required shutdown measures before any sea lions could enter the Level A harassment zone. Therefore, no takes of California sea lions or Steller sea lions by Level A harassment are requested or proposed to be authorized.

Humpback Whale

Humpback whales have been observed in the immediate vicinity of the project area in recent years. Humpbacks have been arriving in the lower Columbia estuary as early as mid-June and have been observed as late as mid-November with a peak of abundance coinciding with the peak abundance of forage fish in mid-summer. No surveys were located for the project area, but it is assumed that they could be present during pile driving activities. Given the higher observed abundances in summer, the Corps assumes up to two individuals per month could enter the Level B harassment zone during pile driving activities each year, for a total of 6 takes of humpback whales by Level B harassment in each year (Table 10).

The largest Level A harassment zone for low-frequency cetaceans for any pile type or method is 430 m. During impact pile driving, the Corps would be required to implement a shutdown zone equivalent to the Level A harassment zone for low-frequency cetaceans. Given the visibility of humpback whales, the Corps would be able to detect humpback whales and shut down pile driving before any humpbacks could enter the Level A harassment zone. Therefore, no take of humpback whales by Level A harassment is requested or proposed to be authorized.

Transient Killer Whale

Killer whales were not detected in fall and winter aerial surveys off the Oregon coast documented in Adams *et al.* (2014). Aerial seabird marine mammal surveys observed zero killer whales in January 2011, zero in February 2012, and 10 in September 2012 within an approximately 1,500 km2 range near the MCR (Adams 2014). While a rare occurrence, a pod of transient killer whales were detected near the Astoria Bridge in May of 2018 (Frankowicz 2018). There have been no confirmed sightings of southern resident killer whales entering the project area. The Corps estimates that no more than 2 transient killer whales per year could be near the mouth of the Columbia River during proposed work and taken by Level B harassment (Table 10).

The largest Level A harassment zone for mid-frequency cetaceans for any pile type or method is 15.3 m. The Corps would be required to implement a minimum 25 m shutdown zone for mid-frequency cetaceans. Given the visibility of killer whales, at that close range, the Corps would be able to detect transient killer whales and shut down pile driving before any killer whales could enter the Level A harassment zone. Therefore, no take of transient killer whales by Level A harassment is requested or proposed to be authorized.

Harbor Porpoise

Harbor porpoises are regularly observed in the oceanward waters adjacent to the project area and are known to occur year-round. Their nearshore abundance peaks with anchovy presence, which is generally June through October. There was one recorded sighting of a harbor porpoise in the project area east of the jetties in the Sept-Nov timeframe (OBIS–SEAMAP 2019). Therefore, it is feasible that animals could be present during pile driving activities. During monitoring for pile driving at the Columbia River Jetty System, over the course of a 5-day monitoring period, observers detected 5 harbor porpoises (Grette Associates 2016). Given the potential for harbor porpoise to travel in pairs, the Corps estimates that one pair of harbor porpoises per day may enter the Level B harassment zone per day of pile driving (67 days in Year 1 and 95

days in Year 2) for a total of 134 harbor porpoises taken in Year 1 and 190 taken in Year 2.

For impact installation of 24-in steel pipe piles, the Level A harassment zone for high-frequency cetaceans is 512 m. Although the Corps would be required to implement a shutdown zone of 515 m during this activity (see Proposed Mitigation), due to the cryptic nature and lower detectability of harbor porpoises at large distances, the Corps anticipates that up to 16 of the harbor porpoises (2 per week over the course of 8 weeks of impact pile driving) that enter the Level B zone in Year 1 could approach the project site closer and potentially enter the Level A harassment zone undetected during impact installation. Similarly, the Corps estimates that up to 27 of the harbor porpoises that enter the Level B harassment zone in Year 2 (2 per week over the course of 13.5 weeks of impact pile driving) could approach the project site closer and potentially enter the Level A harassment zone undetected during impact installation. These takes by Level A harassment could occur as one group in one day or single animals over multiple days. In total, the Corps has requested take of 134 harbor porpoises in Year 1 (118 takes by Level B harassment and 16 takes by Level A harassment) and 190 harbor porpoises in Year 2 (163 takes by Level B harassment and 27 takes by Level A harassment) (Table 10).

Northern Elephant Seal

Northern elephant seals have been observed near the mouth of the Columbia River, but there are no known haulout locations for northern elephant seals in the project vicinity. Given the rarity of sightings in and around the Columbia River, the Corps estimates that no more than 2 northern elephant seals per month may enter the project area and be taken by Level B harassment each year, for a total of 6 takes by Level B harassment in Year 1 and 6 takes by Level B harassment in Year 2 (Table 10).

The largest Level A harassment zone (230 m) occurs during impact installation of 24-in steel pipe piles. It is unlikely that northern elephant seals would be found within this zone, and even more unlikely that northern elephant seals would be found within the Level A harassment zones for vibratory pile driving of any pile size (less than 23 m for all pile types). However, even if northern elephant seals were encountered in the project areas, at that close range, the Corps would be able to detect them and implement the required shutdown measures before any northern elephant seals could enter the Level A harassment zones. Therefore, no take of northern elephant seals by Level A harassment is requested or proposed to be authorized.

TABLE 10—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY YEAR, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Proposed take by Level A harassment	Proposed take by Level B harassment	Total proposed take	Stock	Stock abundance	Percent of stock
Year 1:						
Humpback whale	0	6	6	California/Oregon/Washington	2,900	0.21
Killer whale	0	2	2	West Coast Transient	349	0.57
Harbor porpoise	16	118	134	Northern Oregon/Washington Coast	21,487	0.60
California sea lion	0	15,780	15,780	U.S	257,606	6.13
Steller sea lion	0	19,176	19,176	Eastern	52,932	36.23
Harbor seal	38	3,781	3,819	Oregon/Washington Coast	24,732	15.44
Northern elephant seal	0	6	6	California Breeding	179,000	0.003
Year 2:						
Humpback whale	0	6	6	California/Oregon/Washington	2,900	0.21
Killer whale	0	2	2	West Coast Transient	349	0.57
Harbor porpoise	27	163	190	Northern Oregon/Washington Coast	21,487	0.88
California sea lion	0	23,421	23,421	U.S	257,606	9.09
Steller sea lion	0	29,502	29,502	Eastern	52,932	55.74
Harbor seal	54	5,361	5,415	Oregon/Washington Coast	24,732	21.89
Northern elephant seal	0	6	6	California Breeding	179,000	0.003

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Time Restrictions

The Corps has provided in its description of the project that pile driving would occur only during daylight hours (no sooner than 30 minutes after sunrise through no later than 30 minutes before sunset), when visual monitoring of marine mammals can be conducted. In addition, to minimize impacts to ESA-listed fish species, all in-water construction would

be limited to the months of August through November.

Shutdown Zones

Before the commencement of in-water construction activities, the Corps would establish shutdown zones for all activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Pile driving would also not commence until all marine mammals are clear of their respective shutdown zones. Shutdown zones are meant to encompass the Level A harassment zones and therefore would vary based on the activity type and marine mammal hearing group (Table 11). At minimum, the shutdown zone for all hearing groups and all activities is 25 m. For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 25 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include, for example, the movement of the barge to the pile location or positioning of the pile on the substrate via a crane.

The Corps would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity (see Table 11).

TABLE 11—SHUTDOWN ZONES

Pile type and method	Shutdown zones by hearing group (m)					Shutdown zones for unauthorized species (m)
	LF cetacean	MF cetacean	HF cetacean	Phocid pinniped	Otariid pinniped	
24-in Steel pipe Pile Impact Installation	430	25	515	[a] 50	25	1,000
24-in Steel pipe pile Vibratory Installation	25	25	25	25	25	5,412
24-in Steel Sheet Pile Vibratory Installation [b]	40	25	55	25	25	4,642
24-in Steel Sheet Pile Vibratory Removal [b]	25	25	25	25	25	4,642

[a] 50 m is for harbor seals, shutdown zone for northern elephant seals is 235 m.
[b] Vibratory installation and removal of 24-in steel sheet piles only applicable in Year 1. No sheet piles will be installed or removed in Year 2.

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A and Level B Harassment

PSOs would monitor the Level B harassment zones to the extent practicable, and all of the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Tables 12 and 13, pile driving activity would be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity would not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities would begin and Level B harassment take would be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the Corps' proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved

understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Corps would have at least 2 PSOs stationed in the project area to monitor during all pile driving activities. One PSO would be positioned at the work site on the construction barge to observe Level A harassment and shutdown zones. At least one PSO would monitor from a boat to ensure full visual coverage of the Level B harassment zone(s) and alert construction crews of marine mammals entering the Level B harassment zone and/or approaching the Level A harassment zones. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

For each observation of a marine mammal, the following would be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports would constitute the final reports. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data

would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Corps would report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region (WCR) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Corps would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The Corps would not resume their activities until notified by NMFS.

The report would include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all species listed in Table 10, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. We note, though, that there are far fewer estimated takes of cetaceans than pinnipeds, and some additional pinniped-specific analysis is included.

Pile driving activities associated with the Sand Island Pile Dikes Repairs Project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

In both years, take by Level A harassment is proposed for 2 species (harbor seals and harbor porpoise) to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur PTS before being observed and the Corps shutting down pile driving activity. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Additionally, the amount of authorized take by Level A harassment is very low for all marine mammal stocks and species. For both IHAs, for 5 of 7 affected stocks, NMFS anticipates and proposes to authorize no Level A harassment take over the duration of the Corps' planned activities; for the other 2 stocks, NMFS authorizes no more than 54 takes by Level A harassment in any year. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. These takes of individuals by Level A harassment (*i.e.,* a small degree of PTS) are not expected to accrue in a manner that would affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. The Corps would also shut down pile driving activities if marine mammals approach within hearing group-specific zones that encompass the Level A harassment zones (see Table 11) further minimizing the likelihood and degree of PTS that would be incurred. Even absent mitigation, no serious injury or mortality from construction activities is anticipated or authorized.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, including the Sand Island Pile Dike System Test Piles Project conducted by the Corps in preparation for the proposed Sand Island Pile Dikes Repairs Project (84 FR 61026; November 12, 2019), would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring, particularly as the project is located on a busy waterway at the mouth of the Columbia River with high amounts of

vessel traffic. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. The shores along the Columbia River are occasionally used by harbor seals for pupping, but the Corps' proposed activities would occur outside of the harbor seal pupping season. There are no known important areas for other marine mammals, such as feeding or pupping areas.

For all species and stocks, and in both years, take would occur within a limited, relatively confined area (the mouth of the Columbia River) of the stock's range. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals within the lower Columbia River and immediately outside the river along the Oregon and Washington coasts. Level A harassment and Level B harassment would be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein.

Some individual marine mammals in the project areas may be present and be subject to repeated exposure to sound from pile driving on multiple days. However, pile driving is not expected to occur on every day of the in-water work window, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between work days. As discussed above, there is similar foraging and haulout habitat available for marine mammals within and outside of the Columbia River along the Washington and Oregon coasts, outside of the project area, where individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed to be authorized for either year;
- In both years, Level A harassment is not anticipated or authorized for 5 of the 7 species. For the other 2 species (1 high-frequency cetacean and 1 phocid pinniped), the amount of Level A harassment is low and would be in the form of a slight degree of PTS in limited low frequency ranges (<2 kHz) which are not the most sensitive primary hearing ranges for these species and would not interfere with conspecific communication or echolocation;
- For both years, Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, and some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Nearby areas of similar habitat value (*e.g.,* foraging and haulout habitats) within and outside the lower Columbia River are available for marine mammals that may temporarily vacate the project areas during construction activities for both projects;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations from either project;
- The ensonified areas in both years are very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat from either project;
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks for both projects;
- The enhanced mitigation measures (*e.g.,* shutdown zones equivalent to the Level B harassment zones) to eliminate the potential for any take of unauthorized species; and
- Monitoring reports from similar work in the lower Columbia River, including previous work at the Sand Island Pile Dikes, that have documented little to no behavioral effect on individuals of the same species that could be impacted by the specified activities from both projects, suggesting the degree/intensity of behavioral harassment would be minimal.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activities in Year 1 will have a negligible impact on all affected marine mammal species or stocks. NMFS also preliminarily finds that the total marine mammal take from the proposed activities in Year 2 will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized

under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all species other than Steller sea lions, the proposed take in each year is below one third of the population for all marine mammal stocks (Table 10). In Year 1 and Year 2, the proposed take of Steller sea lions, as a proportion of the stock abundance is 36.23 percent and 55.74 percent, respectively, if all takes are assumed to occur for unique individuals. In reality, it is unlikely that all takes would occur to different individuals. The project area represents a small portion of the stock's overall range (from Alaska to California (Muto *et al.,* 2019)) and based on observations at other Steller sea lion haulouts, it is reasonable to expect individual animals to be present at the haulout and in the water nearby on multiple days during the activities. Therefore, it is more likely that there will be multiple takes of a smaller number of individuals within the project area, such that the number of individuals taken would be less than one third of the population.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks in Year 1. NMFS also preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks in Year 2.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

NMFS is proposing to authorize take of humpback whales from the Mexico and Central America DPSs, which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the West Coast Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two sequential IHAs to the Corps for conducting the Sand Island Pile Dikes Repairs Project in the lower Columbia River, beginning in August 2023, with the previously mentioned mitigation, monitoring, and reporting requirements incorporated. A draft of the proposed IHAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of 2 proposed sequential IHAs for the proposed Sand Island Pile Dikes Repairs Project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 28, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14138 Filed 6–30–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete a product(s) from the Procurement List that were furnished by

nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: July 31, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
5140–00–529–2517—Belt, Tool, Repairman's, Size 34
5140–00–529–2691—Belt, Tool, Repairman's, Size 44
5140–00–529–2694—Belt, Tool, Repairman's, Size 38
Contracting Activity: FAS HEARTLAND REGIONAL ADMINISTRATO, KANSAS CITY, MO

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–14120 Filed 6–30–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* July 31, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 9/10/2021, 12/23/2021, 1/28/2022, 2/25/2022, and 3/11/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, record keeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 13075—Set, Mini Grate and Slice
MR 13047—Container, Leakproof, On-the-Go, Clear, Lunch
MR 13048—Container, Leakproof, On-the-Go, Clear, Salad
MR 13036—Herb Keeper, Green Saver, Large, 2.8 Qt
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
4240–00–NSH–0021—Hearing Protection, Behind-the-Head Earmuff, NRR 26Db
4240–00–NSH–0023—Hearing Protection, Behind-the-Head Earmuff, NRR 21Db
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Custodial and Grounds Maintenance Services
Mandatory for: Internal Revenue Service, Fresno Service Center, Fresno, CA, 5045 E. Butler Avenue, Fresno, CA
Designated Source of Supply: Goodwill Service Connection, Inc., Stockton, CA
Contracting Activity: INTERNAL REVENUE SERVICE, WESTERN REGION
Service Type: Janitorial/Custodial
Mandatory for: Port Angeles Federal Building: 138 W First Street, NULL, Port Angeles, WA
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–14121 Filed 6–30–22; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on the extension of requirements relating to information collected to assist the Commission in soliciting and awarding contracts, OMB Control No. 3038–0031 (Procurement Contracts).

DATES: Comments must be submitted on or before August 30, 2022.

ADDRESSES: You may submit comments, identified by ''Procurement Contracts,'' and Collection Number 3038–0031, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *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.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: William M. Roberson, Business Operations Branch, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581; phone: (202) 418–5367; fax: (202) 418–5414; *email: wroberson@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

Title: Procurement Contracts (OMB Control No. 3038–0031). This is a request for an extension of a currently approved information collection.

Abstract: The information collected under this request is gathered through the use of forms specific to a contract or contracting action. The standard forms are prescribed for use for non-personal services, construction, award of contracts and solicitations as by agencies in connection with the procurement of supplies, purchase and delivery orders, specified in the Federal Acquisition Regulations (48 CFR 1–53). The information provided on the forms is specific and generally does not require additional information or questions.

With respect to the following collection of information, the Commission invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit 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.

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 *http://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 information collection request 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.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect changed circumstances below.

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

Respondents/Affected Entities: Vendors and contractors.

Estimated number of respondents: 1,096.

Estimated burden hours per response: 2 hours.

Estimated total annual burden on respondents: 2,192 hours.

Frequency of responses: Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14087 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 August 1, 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. 3038–0089, 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.[1] 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: Isabella Bergstein, Attorney Adviser, Division of Data Policy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 993–1384; email: *ibergstein@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Swap Data Recordkeeping and Reporting Requirements: Reenactment and Transition Swaps (OMB Control No. 3038–0089). This is a request for an extension of a currently approved information collection.

Abstract: Sections 4r(a)(2)(A) and 2(h)(5) of the Commodity Exchange Act requires the reporting of pre-enactment and transition swaps. Regulations 46.2, 46.3, and 46.11 establish reporting requirements that are mandated by 4r and 2(h) and, thus, are necessary to implement the objectives of 4r and 2(h). Regulation 46.2 establishes swap counterparties' recordkeeping requirements for pre-enactment and transition swaps. Regulation 46.3 establishes reporting requirements for uncleared pre-enactment or transition swaps in existence on or after April 25, 2011, and throughout the existence of the swap.[2] Regulation 46.11 addresses the reporting of errors and omission in previously reported data. The data required to be compiled and maintained pursuant to the Part 46 regulations would be used by the Commission and other financial regulators for fulfillment of various regulatory mandates. The collection of information is needed to ensure that the CFTC and other regulators have access to data regarding pre-enactment and transition swaps, as required by the Commodity Exchange Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

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 April 26, 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 24534 (''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:

• *Recordkeeping:*

Estimated Number of Respondents: 30,108.

Estimated Average Burden Hours per Respondent: 69.5 hours.

Estimated Total Annual Burden Hours: 13,506 hours.

Frequency of Collection: 1.

• *Reporting:*

Estimated Number of Respondents: 608.

Estimated Average Burden Hours per Respondent: 5.64 hours.

Estimated Total Annual Burden Hours: 860 hours.

Frequency of Collection: Daily.

• *Total Annual Burden for the Collection:* 14,366 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14091 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] *See* 17 CFR part 46.1 (defining ''pre-enactment swap'' as any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act, and ''transition swap'' as any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of part 46).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 August 1, 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. 3038–0087, 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.[1] 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: Andrew Chapin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5465; email: *achapin@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (OMB Control Nos. 3038–0087). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants)[2] pursuant to sections 4s(f)[3] and 4s(g)[4] of the Commodity Exchange Act (''CEA'').[5] Commission regulations 23.201 through 23.205 require, among other things, swap dealers (''SD'')[6] and major swap participants (''MSP'')[7] to maintain transaction and position records of their swaps (including daily trading records) and to maintain specified business records (including records related to the governance and financial status of the swap dealer or major swap participant, complaints received by such SD or MSP and such SD or MSP's marketing and sales materials). They also require SDs and MSPs to report certain swap transaction data to swap data repositories, to satisfy certain real time public reporting requirements, and to maintain records of information reported to swap data depositories and for real time reporting purposes.[8] The Commission believes that the information collection obligations imposed by Commission regulations 23.201 through 23.205 are necessary to implement sections 4s(f) and 4s(g) of the CEA, including ensuring that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction.

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 April 26, 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 24533 (''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.

Estimated Average Burden Hours per Respondent: 2,096.

Estimated Total Annual Burden Hours: 224,272.

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: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14090 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 17 CFR 23.201–23.205.

[3] 7 U.S.C. 6s(f).

[4] 7 U.S.C. 6s(g).

[5] 77 FR 20128.

[6] 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.

[7] 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.

[8] *See* 17 CFR 23.201–23.205.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 August 1, 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. 3038–0080, 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.[1] 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: Christopher Cummings, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5445; email: *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Report for Chief Compliance Officer of Registrants (OMB Control No. 3038–0080). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Regulation 3.3 (Chief Compliance Officer)[2] under sections 4d(d) and 4s(k)[3] of the Commodity Exchange Act (''CEA''). Commission Regulation 3.3 requires each futures commission merchant (''FCM''), swap dealer (''SD''), and major swap participant (''MSP'') to designate, by filing a Form 8–R, a chief compliance officer who is responsible for developing and administering policies and procedures that fulfill certain duties of the SD, MSP, or FCM and that are reasonably designed to ensure the registrant's compliance with the CEA and Commission regulations; establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; establishing procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; preparing, signing, certifying and filing with the Commission an annual compliance report that contains the information specified in the regulations; amending the annual report if material errors or omissions are identified; and maintaining records of the registrant's compliance policies and procedures and records related to the annual report. The information collection obligations imposed by Commission Regulation 3.3 are essential to ensuring that FCMs, SDs, and MSPs maintain comprehensive policies and procedures that promote compliance with the CEA and Commission regulations. In particular, the Commission believes that, among other things, these obligations (i) promote compliance behavior through periodic self-evaluation, (ii) inform the Commission of possible compliance weaknesses, (iii) assist the Commission in determining whether the registrant remains in compliance with the CEA and Commission regulations, and (iv) help the Commission to assess whether the registrant has mechanisms in place to adequately address compliance problems that could lead to a failure of the registrant.

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 April 26, 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 24535 (''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:

Number of Registrants: 166.

Estimated Average Burden Hours per Registrant: 1,006.

Estimated Aggregate Burden Hours: 166,966.

Frequency of Recordkeeping: Annually or on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14089 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 17 CFR 3.3.

[3] 7 U.S.C. 6d(d) and 6s(k).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

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 August 1, 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. 3038–0024, 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.[1] 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: Jennifer Bauer, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5472; email: *jbauer@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations and Forms Pertaining to the Financial Integrity of the Marketplace (OMB Control No. 3038–0024). This is a request for an extension of a currently approved information collection.

Abstract: The Commission is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the commodity markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Part 1 of the Commission's regulations requires, among other things, that commodity brokers—known as futures commission merchants (''FCMs''), or Introducing Brokers (''IBs''), comply with certain minimum financial requirements. In order to monitor compliance with these financial standards, the Commission has required FCMs and IBs to file financial reports with the Commission and with the designated self-regulatory organization of which they are members as well as to report to the Commission should certain financial requirements drop below prescribed minimums.

In 2008, the U.S. Congress passed the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2189–2204 (2008), also known as the Farm Bill. The Farm Bill provided the Commission with new authority with regard to the regulation of off-exchange retail forex transactions. Among other things, it directed the Commission to draft rules effectuating registration provisions for a new category of registrant—the retail foreign exchange dealer (''RFED''). Under the terms of the legislation, RFEDs are subject to the same capital requirements as FCMs that are engaged in retail forex transactions, and, therefore, subject to the same reporting requirements. Accordingly, this collection was amended to reflect the financial reporting requirements of the new category of registrant, RFEDs.

In 2010, the U.S. Congress passed the Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), giving the Commission the authority to regulate certain swap markets and participants in those markets. Section 731 of the Dodd-Frank Act, amended the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.,* to add, as section 4s(e) thereof, provisions concerning the setting of capital and initial and variation margin requirements for swap dealers (''SDs'') and major swap participants (''MSPs''). In 2016 and 2020 respectively, the Commission finalized the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants rule and the Capital Requirements for Swap Dealers and Major Swap Participants rule to implement those requirements. Specifically, such rules include financial reporting and recordkeeping, as well as application processes for model approval for both capital and margin models for SDs and MSPs that do not have a prudential regulator (''Covered Swap Entities'' or ''CSEs'').

Separately, in 2013, the Commission finalized rules in an effort to prevent unauthorized usage of customer funds by FCMs and RFEDs. The final rules included modifications to the reporting requirements required by the Commission which resulted in changes to the financial statements filed by FCMs and RFEDs, and made some of the recordkeeping requirements already contained in this OMB Collection Number 3038–0024 into reporting requirements. These rules added additional recordkeeping requirements by FCMs to assure the segregation of customer funds. This collection, OMB Control No. 3038–0024, is needed for the Commission to continue its financial monitoring of its registrants.

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 April 29, 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 25468 (''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 Commission is revising its estimate of the burden for this collection for approximately 61 FCMs and RFEDs, 53 CSEs and 1,019 IBs. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1,133.

Estimated Average Burden Hours per Respondent: 251 hours.[2]

Estimated Total Annual Burden Hours: 284,124 hours.[3]

Frequency of Collection: At various intervals.[4]

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14086 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995

[1] 17 CFR 145.9.

[2] Rounded off from 250.7714033.

[3] This figure is derived from 250.7714033 (burden hours per respondent) × 1,133 respondents = 284,124.

[4] For example, FCMs have both daily and monthly financial reporting obligations, annual certified financial and compliance report obligations, and periodic notice requirements.

(''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 August 1, 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. 3038–0052, 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.[1] 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: Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; 202–418–5344; email: *rsmith@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Core Principles & Other Requirements for DCMs (OMB Control No. 3038–0052). This is a request for a revision and extension of a currently approved information collection.

Abstract: The regulations governing designated contract markets (''DCMs'') originally were adopted pursuant to the Commodity Futures Modernization Act of 2000, which amended section 5 of the Commodity Exchange Act (''CEA'') to impose requirements concerning the registration [2] and operation of DCMs.[3] The DCM statutory framework subsequently was revised as a result of further amendments to the CEA under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[4] Part 38 of the Commission's regulations governs the activities of DCMs. The information collected pursuant to Part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become, DCMs comply with the Part 38 and other Commission requirements and the CEA's statutory requirements.

Collection 3038–0052 was created in response to the Part 38 regulatory requirements for DCMs. In general, OMB Control Number 3038–0052 covers all information collections in Part 38, including Subpart A and the DCM core principles (*i.e.,* Subparts B through X) as well as the related appendices thereto (*i.e.,* Appendix A—Form DCM; Appendix B—Guidance on, and Acceptable Practices in, Compliance with Core Principles; and Appendix C—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation). Further, this OMB control number, 3038–0052, also includes all information collections related to Part 9 (''Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions'') to the extent Part 9 is applicable to DCMs.[5] This collection also includes the requirements under regulation 38.251(g) in connection with the reporting of specific market disruption events to the Commission.

This OMB control number, 3038–0052, also includes collections under regulation 1.52 regarding the Enhanced Protections Afforded Customer and Customer Funds Held by Futures Clearing Merchants and Derivatives Clearing Organizations. Commission regulation 1.52 imposes information collection burdens on DCMs.[6]

Additionally, this OMB control number, 3038–0052, also includes collections under regulation 38.1051(n) that relate to system safeguards and cybersecurity testing requirements and requires DCMs to provide the Commission with annual trading volume information.

For the majority of collections under OMB control number 3038–0052, the Commission notes that the number of registered, active DCMs has increased from 14 to 16. This increase in the number of registered DCMs will increase the total information collection burdens for OMB control number 3038–0052 as shown below.[7]

An agency may not conduct or sponsor, and a person is not required to

[1] 17 CFR 145.9.

[2] The Commission notes that the terms ''registered'' and ''designated'' are used interchangeably and mean the same thing.

[3] 7 U.S.C. 1 *et seq.*

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, tit. VII, 124 Stat. 1376 (2010) (codified as amended in various sections of 7 U.S.C.), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf.*

[5] Section 38.707 specifically references Part 9. Accordingly, the Commission's previous information collection estimates under Part 38 have included compliance with Part 9 to the extent applicable to DCMs. The Commission is referencing DCMs' compliance obligations with Part 9 for the sake of clarity, but this does not represent a new or modified information collection.

[6] The Commission notes that § 38.605 incorporates and references § 1.52. Accordingly, the Commission's previous information collection estimates under Part 38 have included compliance with § 1.52 to the extent applicable to DCMs. The Commission is referencing DCMs' compliance obligations with § 1.52 for the sake of clarity, but this does not represent a new or modified information collection.

[7] For the collections related to Commission regulation 38.251(g), the Commission notes that the number of registered, active DCMs has decreased from 17 to 16. This decrease is reflected below for collections related to Commission regulation 38.251(g). However, despite this decrease, the total information collection burdens for OMB control number 3038–0052 will increase.

respond to, a collection of information unless it displays a currently valid OMB control number. On April 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 25228 (''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:

• Regulatory & Core Principle Compliance Part 38 (Subparts A–W) and related Appendices:

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 330.

Estimated Total Annual Burden Hours: 5,280.

Frequency of Collection: per Trading Day.

• § 1.52 (Examination Program and Audit of Program):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 49.

Estimated Total Annual Burden Hours: 784.

Frequency of Collection: Annually.

• Core Principle 16 ''Conflicts of Interest'' and Related Acceptable Practices (Annual Assessment Report):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 70.

Estimated Total Annual Burden Hours: 1,120.

Frequency of Collection: Annually.

• § 38.1101 *et al* (Quarterly Financial Reports):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 640.

Frequency of Collection: Quarterly.

• § 38.1051(n) (Required Production of Annual Trading Volume):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 0.5.

Estimated Total Annual Burden Hours: 8.

Frequency of Collection: Annually.

• § 38.3 and Form DCM (DCM Registration):

Estimated Number of Respondents: 4.

Estimated Average Burden Hours per Respondent: 300.

Estimated Total Annual Burden Hours: 1,200 hours.

Frequency of Collection: As applicable.

• § 38.251(g) (Required Market Disruptions Notifications):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 66.4 hours.

Estimated Total Annual Burden Hours: 1,062.4 hours.

Frequency of Collection: As needed.

• §§ 38.950 and 38.951 (Recordkeeping Related to Compliance with 38.251(g)):

Estimated Number of Respondents: 16.

Estimated Average Burden Hours per Respondent: 25 hours.

Estimated Total Annual Burden Hours: 400 hours.

Frequency of Collection: As needed.

• Total Annual Burden for the Collection: 10,494.4 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 27, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14088 Filed 6–30–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Recruitment and Field Test

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before August 1, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Comment Request; 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Recruitment and Field Test.

OMB Control Number: 1850–0888.

Type of Review: Reinstatement with change of a previously approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 2,683.

Total Estimated Number of Annual Burden Hours: 3,133.

Abstract: The Teaching and Learning International Survey (TALIS) is an international survey of teachers and principals focusing on the working conditions of teachers and the teaching and learning practices in schools. The United States will administer TALIS for the third time in 2024, having participated in 2013 and 2018. TALIS 2024 is sponsored by the Organization for Economic Cooperation and Development (OECD). TALIS is steered by the TALIS Governing Board (TGB), comprising representatives from the OECD member countries, and implemented internationally by organizations contracted by the OECD (referred to as the ''international consortium'' or ''IC''). In the U.S., TALIS 2024 is conducted by the National Center for Education Statistics (NCES) of the Institute of Education Sciences, U.S. Department of Education.

TALIS 2024 is focused on teachers' professional environment, teaching conditions, and their impact on school and teacher effectiveness. TALIS 2024 will address teacher training and professional development, teacher appraisal, school climate, school leadership, instructional approaches, pedagogical practices, and teaching experience with and support for teaching diverse populations.

OECD has scheduled the main study to occur in the Northern hemisphere from February through March 2024 and in the Southern hemisphere from June through August 2024. To prepare for the main study, several TALIS countries will conduct pilot studies in February 2022; the U.S. will not participate. Countries will also conduct a field test in the first quarter of 2023, primarily to evaluate newly developed questionnaire items and school recruitment materials; the U.S. will participate in the field test. To meet the international data collection schedule for the field test, U.S. recruitment activities need to begin by August 2022 and U.S. questionnaires must be finalized by December 2022.

TALIS 2024 includes the core TALIS teacher and principal surveys that are required for each participating country, as well as an optional Teacher Knowledge Survey (TKS). The TKS is intended to better understand the teacher pedagogical knowledge base at the national level. The US is including the TKS in the upcoming TALIS 2024 field test and will evaluate these results to determine the feasibility of including TKS as part of the US Main Study.

This submission requests approval for: recruitment and pre-survey activities for the 2023 field test sample; administration of the field test; and school recruitment and pre-survey activities for the 2024 main study sample. The materials that will be used in the 2024 main study will be based upon the field test materials included in this submission. Additionally, this submission is designed to adequately justify the need for and overall practical utility of the full study and to present the overarching plan for all phases of the data collection, providing as much detail about the measures to be used as is available at the time of this submission. As part of this submission, NCES is publishing a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. For the final proposal for the full study, after the field test NCES will publish a notice in the **Federal Register** allowing an additional 30-day public comment period on the final details of the 2024 main study.

Dated: June 28, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–14148 Filed 6–30–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14514–003]

Community of Elfin Cove Non Profit Corporation, DBA Elfin Cove Utility Commission; Notice of Application Accepted for Filing, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14514–003.

c. *Date filed:* August 24, 2020.

d. *Applicant:* Community of Elfin Cove Non Profit Corporation, DBA Elfin Cove Utility Commission.

e. *Name of Project:* Crooked Creek and Jim's Lake Hydroelectric Project.

f. *Location:* On Crooked Creek and Jim's Lake, near the community of Elfin Cove, in the Sitka Recording District, Unorganized Borough, Alaska. The project would occupy 10.5 acres of federal land in the Tongass National Forest, managed by the U.S. Department of Agriculture's Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Joel Groves, Polarconsult Alaska, Inc., 1503 W 33rd Avenue, #310, Anchorage, Alaska 99503; phone: (907) 258–2420 ext. 204.

i. *FERC Contact:* John Matkowski, (202) 502–8576 or *john.matkowski@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14514–003.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed project would consist of: (1) a new surface water intake structure fitted with an 8-foot-wide, 18-inch high inclined plate screen with 0.1 millimeter openings to divert up to five cubic feet per second (cfs) from Crooked Creek to a 16-foot-long, 4-foot-diameter buried intake pipe; (2) a new 825-foot-

long, 14-inch-diameter partially buried high-density polyethylene (HDPE) penstock extending between the intake structure in Crooked Creek to an 8-foot-long, 6-foot-diameter buried energy dissipation structure near the shoreline of Jim's Lake; (3) a new 30-foot-long, 4-foot-wide, 18-inch deep rip-rap discharge apron below the energy dissipation structure that discharges into the existing 160-foot-long natural channel flowing into Jim's Lake; (4) the existing Jim's Lake with a new surface area of 5.7 acres and gross storage capacity of 76-acre-feet at normal maximum water elevation of 342 feet mean low water; (5) a new 200-foot-long, 14-foot-high reinforced concrete dam with a 35-foot-long, 20-foot-wide, 14-foot-high spillway section at the outlet of Jim's Lake; (6) a new intake consisting of a 4-foot-wide, 6-foot-high vertically-oriented intake screen and a 20-inch-diamter intake opening; (7) a new 2,350-foot-long, 16 to 20-inch-diameter buried HDPE penstock extending between the intake pipe opening and the powerhouse; (8) a 20-foot-long, 28-foot-wide, 14-foot-high wood-frame powerhouse containing a 105-kilowatt impulse turbine-generator unit; (9) a tailrace discharging flows into Port Althorp; (10) a 5,800-foot-long, 7.2/12.47-kilovolt (kV) buried transmission line extending from the project powerhouse to Elfin Cove's existing 7.2/12.47-kV transmission line; and (11) appurtenant facilities.

The project would generate an average of 594.8 megawatt-hours annually.

m. Due to the small size and location of this project, the applicant's close coordination with federal and state agencies during preparation of the application, and studies completed during pre-filing consultation, we intend to waive scoping and expedite the licensing process. Based on a review of the application and resource agency consultation letters including comments filed to date, Commission staff does not anticipate that any new issues would be identified through additional scoping. Based on the issues identified during the pre-filing period, staff's National Environmental Policy Act (NEPA) document will consider the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation, and cultural and historic resources.

n. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

q. Procedural schedule: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing interventions, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	August 2022.
Deadline for filing reply comments.	October 2022.

Dated: June 28, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14110 Filed 6–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3211–010; Project No. 2701–061]

Power Authority of the State of New York; Erie Boulevard Hydropower, L.P.; Notice of Intent To Prepare an Environmental Assessment

On July 31, 2020, the Power Authority of the State of New York (NYPA) filed an application for a new major license for the 9-megawatt Hinckley (Gregory B.

Jarvis) Hydroelectric Project (Hinckley-Jarvis Project; FERC No. 3211). The Hinckley-Jarvis Project is located on West Canada Creek near the Hamlet of Hinckley in the counties of Oneida and Herkimer, New York. On February 26, 2021, Erie Boulevard Hydropower, L.P. (Erie) filed an application for a new major license for the 39.75-megawatt West Canada Creek Hydroelectric Project (West Canada Creek Project; FERC No. 2701). The West Canada Creek Project is also located on West Canada Creek, downstream of the Hinckley-Jarvis Project, in the counties of Oneida and Herkimer, New York. No federal or tribal lands occur within or adjacent to either project's boundary.

In accordance with the Commission's regulations, on January 12, 2022, Commission staff issued separate notices that both the Hinckley-Jarvis and West Canada Creek projects were ready for environmental analysis (REA Notice).[1] Based on the information in the projects' records, including comments filed on the REA Notices, staff does not anticipate that licensing the projects would constitute a major federal action significantly affecting the quality of the human environment. However, because the Hinckley-Jarvis and West Canada Creek projects are located adjacent to each other in the same river basin and include similar issues, it is the Commission's intent to continue to process these relicense applications concurrently. Therefore, staff intends to prepare a draft and final multi-project Environmental Assessment (EA) on the applications to relicense the Hinckley-Jarvis and West Canada Creek projects.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The applications will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues draft EA	December 2022.
Comments due on draft EA	January 2023.
Commission issues final EA	June 2023.[2]

[1] On March 1, 2022, NYPA requested that the deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions be extended until June 11, 2022, in order to allow parties to work on a settlement agreement. On March 3, 2022, Erie requested a similar extension. Commission staff granted both requests for extension in letters issued on March 10, 2022.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare a draft and final EA for the Hinckley-Jarvis and West Canada Creek projects. Therefore, in accordance with CEQ's regulations, the final EA must be issued within 1 year of the issuance date of this notice.

Any questions regarding this notice may be directed to Emily Carter at (202) 502–6512 or *emily.carter@ferc.gov.*

Dated: June 28, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14109 Filed 6–30–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0743; FRL–9943–01–OCSPP]

n-Methylpyrrolidone (NMP); Draft Revision to Toxic Substances Control Act (TSCA) Risk Determination; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and seeking public comment on a draft revision to the risk determination for the n-methylpyrrolidone (NMP) risk evaluation issued under TSCA. The draft revision to the NMP risk determination reflects the announced policy changes to ensure the public is protected from unreasonable risks from chemicals in a way that is supported by science and the law. In this draft revision to the risk determination EPA finds that NMP, as a whole chemical substance, presents an unreasonable risk of injury to health when evaluated under its conditions of use. In addition, this draft revised risk determination does not reflect an assumption that all workers always appropriately wear personal protective equipment (PPE). EPA understands that there could be occupational safety protections in place at workplace locations; however, not assuming use of PPE reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, or their employers are out of compliance with OSHA standards, or because OSHA has not issued a permissible exposure limit (PEL) (as is the case for NMP). This revision, when final, would supersede the condition of use-specific no unreasonable risk determinations in the December 2020 NMP risk evaluation (and withdraw the associated order) and would make a revised determination of unreasonable risk for NMP as a whole chemical substance.

DATES: Comments must be received on or before August 1, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–EPA–HQ–OPPT–2016–0743, using the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Clara Hull, Office of Pollution Prevention and Toxics (7404M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3954; email address: *hull.clara@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, use, disposal, and/or the assessment of risks involving chemical substances and mixtures. You may be potentially affected by this action if you manufacture (defined under TSCA to include import), process (including recycling), distribute in commerce, use or dispose of NMP, including NMP in products. Since other entities may also be interested in this draft revision to the risk determination, EPA has not attempted to describe all the specific entities that may be affected by this action.

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

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation (PESS) identified as relevant to the risk evaluation by the Administrator, under the conditions of use. 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence, and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i) through (ii) and (iv) through (v). Each risk evaluation must not consider costs or other non-risk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

EPA has inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). Pursuant to such authority, EPA is reconsidering the risk determinations in the December 2020 NMP Risk Evaluation.

C. What action is EPA taking?

EPA is announcing the availability of and seeking public comment on a draft revision to the risk determination for the risk evaluation for NMP under TSCA, which was initially published in December 2020 (Ref. 1). EPA is specifically seeking public comment on the draft revision to the risk determination for the risk evaluation where the agency intends to determine that NMP, as a whole chemical, presents an unreasonable risk of injury to health when evaluated under its conditions of use. The Agency's risk determination for NMP is better characterized as a whole chemical risk determination rather than condition-of-use-specific risk determinations. Accordingly, EPA would revise and replace section 5 of the risk evaluation for NMP where the findings of unreasonable risk to health were previously made for the individual conditions of use evaluated. EPA would also withdraw the order issued previously for 11 conditions of use previously determined not to present unreasonable risk.

This revision would be consistent with EPA's plans to revise specific aspects of the first ten TSCA chemical risk evaluations in order to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment. Under the draft revision, removing the assumption that workers always and appropriately wear PPE (see Unit II.C.) in making the whole chemical risk determination for NMP would result in three additional conditions of use to the original 26 driving the unreasonable risk determination for NMP. Additionally, for five conditions of use, acute effects in addition to chronic effects would now drive the unreasonable risk to workers. Overall, 29 of the 37 conditions of use EPA evaluated would drive the NMP whole chemical unreasonable risk determination due to risks identified for human health. The full list of the conditions of use evaluated for the NMP TSCA risk evaluation is in Table 1–6 of the risk evaluation (Ref. 2).

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

II. Background

A. Why is EPA re-issuing the risk determination for the NMP risk evaluation conducted under TSCA?

In 2016, as directed by TSCA section 6(b)(2)(A), EPA chose the first ten chemical substances to undergo risk evaluations under the amended TSCA. These chemical substances are asbestos, 1-bromopropane, carbon tetrachloride, C.I. Pigment Violet 29, HBCD, 1,4-dioxane, methylene chloride, NMP, perchloroethylene (PCE), and trichloroethylene (TCE).

From June 2020 to January 2021, EPA published risk evaluations on the first ten chemical substances, including for NMP in December 2020. The risk evaluations included individual unreasonable risk determinations for each condition of use evaluated. EPA issued determinations that particular conditions of use did not present an unreasonable risk by order under TSCA section 6(i)(1).

In accordance with Executive Order 13990 (Ref. 3) and other Administration priorities (Refs. 4, 5, and 6), EPA reviewed the risk evaluations for the first ten chemical substances, including NMP, to ensure that they meet the requirements of TSCA, including conducting decision making in a manner that is consistent with the best available science.

As a result of this review, EPA announced plans to revise specific aspects of the first ten risk evaluations in order to ensure that the risk evaluations appropriately identify

unreasonable risks and thereby help ensure the protection of human health and the environment (Ref. 7). To that end, EPA is reconsidering two key aspects of the risk determinations for NMP published in December 2020. First, following a review of specific aspects of the December 2020 NMP risk evaluation, EPA proposes that making an unreasonable risk determination for NMP as a whole chemical substance, rather than making unreasonable risk determinations separately on each individual condition of use evaluated in the risk evaluation, is the most appropriate approach to NMP under the statute and implementing regulations. Second, EPA proposes that the risk determination should be explicit that it does not rely on assumptions regarding the use of personal protective equipment (PPE) in making the unreasonable risk determination under TSCA section 6, even though some facilities might be using PPE as one means to reduce workers exposures; rather, the use of PPE would be considered during risk management as appropriate.

Separately, EPA is conducting a screening approach to assess potential risks from the air and water pathways for several of the first 10 chemicals, including this chemical. For NMP the exposure pathways that were or could be regulated under another EPA administered statute were not fully assessed as part of the final risk evaluation (see section 1.4.2 of the December 2020 NMP risk evaluation). During problem formulation, EPA conducted a first-tier screening analysis for the ambient air pathway to near-field populations downwind from industrial and commercial facilities releasing NMP which indicated low risk. In the final risk evaluation EPA conducted a first-tier analysis to estimate NMP surface water concentrations and did not identify risks from incidental ingestion or dermal contact during swimming. This resulted in the ambient air and drinking water pathways for NMP not being fully assessed in the risk evaluation published in December 2020. The goal of the recently-developed screening approach is to provide for a more robust assessment of these pathways for NMP and to identify if there are risks that were unaccounted for in the NMP risk evaluation. While this analysis is underway, EPA is not incorporating the screening-level approach into this draft revised unreasonable risk determination. If the results suggest there is additional risk, EPA will determine if the risk management approaches being contemplated for NMP will protect against these risks or if the risk evaluation will need to be formally supplemented or revised.

This action pertains only to the risk determination for NMP. While EPA intends to consider and may take additional similar actions on other of the first ten chemicals, EPA is taking a chemical-specific approach to reviewing the risk evaluations and is incorporating new policy direction in a surgical manner, while being mindful of the Congressional direction on the need to complete risk evaluations and move toward any associated risk management activities in accordance with statutory deadlines.

B. What is a whole chemical view of the unreasonable risk determination for the NMP risk evaluation?

TSCA section 6 repeatedly refers to determining whether a chemical *substance* presents unreasonable risk under its conditions of use. Stakeholders have disagreed over whether a chemical substance should receive: A single determination that is comprehensive for the chemical substance after considering the conditions of use, referred to as a whole-chemical determination; or multiple determinations, each of which is specific to a condition of use, referred to as condition-of-use-specific determinations.

The proposed risk evaluation procedural rule was premised on the whole chemical approach to making an unreasonable risk determination (Ref. 8). In that proposed rule, EPA acknowledged a lack of specificity in statutory text that might lead to different views about whether the statute compelled EPA's risk evaluations to address all conditions of use of a chemical substance or whether EPA had discretion to evaluate some subset of conditions of use (*i.e.,* to scope out some manufacturing, processing, distribution in commerce, use, or disposal activities), but also stated that ''EPA believes the word 'the' (in TSCA section 6(b)(4)(A)) is best interpreted as calling for evaluation that considers all conditions of use.'' (Ref. 8).

The proposed rule, however, was unambiguous on the point that an unreasonable risk determination would be for the chemical substance as a whole, even if based on a subset of uses. (See Ref. 8 at pgs. 7565–66: ''TSCA section 6(b)(4)(A) specifies that a risk evaluation must determine whether 'a chemical substance' presents an unreasonable risk of injury to health or the environment 'under the conditions of use.' The evaluation is on the chemical substance—not individual conditions of use—and it must be based on 'the conditions of use.' In this context, EPA believes the word 'the' is best interpreted as calling for evaluation that considers all conditions of use.''). In the proposed regulatory text, EPA proposed to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (Ref. 8 at pg. 7480).

The final risk evaluation procedural rule (Ref. 9) stated: ''As part of the risk evaluation, EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents.'' (See also 40 CFR 702.47). For the unreasonable risk determinations in the first ten risk evaluations, EPA applied this provision by making individual risk determinations for each condition of use evaluated in each risk evaluation (*i.e.,* the condition-of-use-specific approach to risk determinations). That approach was based on one particular passage in the preamble to the final risk evaluation procedural rule, which stated that EPA will make individual risk determinations for all conditions of use identified in the scope. (Ref. 9 at pg. 33744).

In contrast to this portion of the preamble of the final risk evaluation procedural rule, the regulatory text itself and other statements in the preamble reference a risk determination *for the chemical substance* under its conditions of use, rather than separate risk determinations for each of the conditions of use of a chemical substance. In the key regulatory provision excerpted earlier from 40 CFR 702.47, the text explains that ''[a]s part of the risk evaluation, EPA will determine whether *the chemical substance* presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents'' (Ref. 9, emphasis added). Other language reiterates this perspective. For example, 40 CFR 702.31(a) states that the purpose of the rule is to establish the EPA process for conducting a risk evaluation to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment as required under TSCA section 6(b)(4)(B). Likewise, there are recurring references to whether the chemical substance presents an unreasonable risk

in 40 CFR 702.41(a). See, for example, 40 CFR 702.41(a)(6), which explains that the extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk. Notwithstanding the one preambular statement about condition-of-use-specific risk determinations, the preamble to the final rule also contains support for a risk determination on the chemical substance as a whole. In discussing the identification of the conditions of use of a chemical substance, the preamble notes that this task inevitably involves the exercise of discretion on EPA's part, and ''as EPA interprets the statute, the Agency is to exercise that discretion consistent with the objective of conducting a technically sound, manageable evaluation to determine whether a chemical substance—not just individual uses or activities—presents an unreasonable risk.'' (Ref. 8 at pg. 33729).

Therefore, notwithstanding EPA's choice to issue condition-of-use-specific risk determinations to date, EPA interprets its risk evaluation regulation to also allow the Agency to issue whole-chemical risk determinations. Either approach is permissible under the regulation. A panel of the Ninth Circuit Court of Appeals also recognized the ambiguity of the regulation on this point. *Safer Chemicals* v. *EPA, 943 F.3d 397, 413* (9th Cir. 2019) (holding a challenge about ''use-by-use risk evaluations [was] not justiciable because it is not clear, due to the ambiguous text of the Risk Evaluation Rule, whether the Agency will actually conduct risk evaluations in the manner Petitioners fear'').

EPA plans to consider the appropriate approach for each chemical substance risk evaluation on a case-by-case basis, taking into account considerations relevant to the specific chemical substance in light of the Agency's obligations under TSCA. The Agency expects that this case-by-case approach will provide greater flexibility in the Agency's ability to evaluate and manage unreasonable risk from individual chemical substances. EPA believes this is a reasonable approach under TSCA and the Agency's implementing regulations.

With regard to the specific circumstances of NMP, as further explained in this notice, EPA proposes that a whole chemical approach is appropriate for NMP in order to protect health and the environment. The whole chemical approach is appropriate for NMP because there are benchmark exceedances for multiple conditions of use (spanning across most aspects of the chemical lifecycle—from manufacturing (including import), processing, commercial and industrial use, consumer use, and disposal) for health of workers and consumers and the irreversible health effects (specifically developmental post implantation fetal loss and reduced fertility and fecundity) associated with NMP exposures. Because these chemical-specific properties cut across the conditions of use within the scope of the risk evaluation, a substantial amount of the conditions of use drive the unreasonable risk; therefore, it is appropriate for the Agency to make a determination for NMP that the whole chemical presents an unreasonable risk.

As explained later in this document, the revisions to the unreasonable risk determination (section 5 of the risk evaluation) would be based on the existing risk characterization section of the risk evaluation (section 4 of the risk evaluation) and would not involve additional technical or scientific analysis. The discussion of the issues presented in this **Federal Register** notice and in the accompanying draft revision to the risk determination would supersede any conflicting statements in the prior NMP risk evaluation and the response to comments document (Ref. 10). With respect to the NMP risk evaluation, EPA intends to change the risk determination to a whole chemical approach without considering the use of PPE and does not intend to amend, nor does a whole chemical approach require amending, the underlying scientific analysis of the risk evaluation in the risk characterization section of the risk evaluation. EPA views the peer reviewed hazard and exposure assessments and associated risk characterization as robust and upholding the standards of best available science and weight of the scientific evidence per TSCA sections 26(h) and (i).

EPA is announcing the availability of and seeking public comment on the draft superseding unreasonable risk determination for NMP, including a description of the risks driving the unreasonable risk determination under the conditions of use for the chemical substance as a whole. For purposes of TSCA section 6(i), EPA is making a draft risk determination on NMP as a whole chemical. Under the proposed revised approach, the ''whole chemical'' risk determination for NMP would supersede the no unreasonable risk determinations for NMP that were premised on a condition-of-use-specific approach to determining unreasonable risk. When finalized, EPA's revised unreasonable risk determination would also contain an order withdrawing the TSCA section 6(i)(1) order in section 5.4.1 of the December 2020 NMP risk evaluation.

C. What revision does EPA propose about the use of PPE for the NMP risk evaluation?

In the risk evaluations for the first ten chemical substances, as part of the unreasonable risk determination, EPA assumed for several conditions of use that all workers were provided and always used PPE in a manner that achieves the stated assigned protection factor (APF) for respiratory protection, or used chemically resistant gloves for dermal protection. In support of this assumption, EPA considered reasonably available information such as public comments indicating that some employers, particularly in the industrial setting, provide PPE to their employees and follow established worker protection standards (*e.g.,* Occupational Safety and Health Administration (OSHA) requirements for protection of workers).

For the December 2020 NMP risk evaluation, EPA assumed based on information provided by public comments and safety data sheets of NMP that workers use PPE—specifically, respirators with an APF 10 and gloves with a PF ranging from 5 to 10—for all occupational conditions of use. In the December 2020 NMP risk evaluation, EPA determined that there is unreasonable risk to these workers for 25 of the 28 occupational COUs even with this assumed PPE use.

EPA is revising the assumption for NMP that workers always or properly use PPE, although it does not question the public comments received regarding the occupational safety practices often followed by industry respondents. When characterizing the risk to human health from occupational exposures during risk evaluation under TSCA, EPA believes it is appropriate to evaluate the levels of risk present in baseline scenarios where PPE is not assumed to be used by workers. This approach of not assuming PPE use by workers considers the risk to potentially exposed or susceptible subpopulations (workers and occupational non-users) who may not be covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan. It should be noted that, in some cases, baseline conditions may reflect certain mitigation measures, such as engineering controls, in instances where exposure estimates are based on

monitoring data at facilities that have engineering controls in place.

In addition, EPA believes it is appropriate to evaluate the levels of risk present in scenarios considering applicable OSHA requirements (*e.g.,* chemical-specific permissible exposure limits (PELs) and/or chemical-specific PELs with additional substance-specific standards), as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency. Consistent with this approach, the December 2020 NMP risk evaluation characterized risk to workers both with and without the use of PPE. By characterizing risks using scenarios that reflect different levels of mitigation, EPA risk evaluations can help inform potential risk management actions by providing information that could be used during risk management to tailor risk mitigation appropriately to address any unreasonable risk identified, or to ensure that applicable OSHA requirements or industry or sector best practices that address the unreasonable risk are required for all potentially exposed or susceptible subpopulations (including self-employed individuals and public sector workers who are not covered by an OSHA State Plan).

When undertaking unreasonable risk determinations as part of TSCA risk evaluations, however, EPA does not believe it is appropriate to assume as a general matter that an applicable OSHA requirement or industry practices related to PPE use is consistently and always properly applied. Mitigation scenarios included in the EPA risk evaluation (*e.g.,* scenarios considering use of various PPE) likely represent what is happening already in some facilities. However, the Agency cannot assume that all facilities have adopted these practices for the purposes of making the TSCA risk determination.

Therefore, EPA proposes to make a determination of unreasonable risk for NMP from a baseline scenario that does not assume compliance with OSHA standards, including any applicable exposure limits or requirements for use of respiratory protection or other PPE. Making unreasonable risk determinations based on the baseline scenario should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location, or that there is widespread non-compliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan, or because their employer is out of compliance with OSHA standards, or because EPA finds unreasonable risk for purposes of TSCA notwithstanding OSHA requirements.

In accordance with this approach, EPA is proposing the draft revision to the NMP risk determination without relying on assumptions regarding the occupational use of PPE in making the unreasonable risk determination under TSCA section 6; rather, information on the use of PPE as a means of mitigating risk (including public comments received from industry respondents about occupational safety practices in use) would be considered during the risk management phase as appropriate. This would represent a change from the approach taken in the 2020 risk evaluation for NMP and EPA invites comments on this draft change to the NMP risk determination. As a general matter, when undertaking risk management actions, EPA intends to strive for consistency with applicable OSHA requirements and industry best practices, including appropriate application of the hierarchy of controls, when those measures would address an identified unreasonable risk, including unreasonable risk to potentially exposed or susceptible subpopulations. Consistent with TSCA section 9(d), EPA will consult and coordinate TSCA activities with OSHA and other relevant Federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements. Informed by the mitigation scenarios and information gathered during the risk evaluation and risk management process, the Agency might propose rules that require risk management practices that may be already common practice in many or most facilities. Adopting clear, comprehensive regulatory standards will foster compliance across all facilities (ensuring a level playing field) and assure protections for all affected workers, especially in cases where current OSHA standards may not apply or be sufficient to address the unreasonable risk.

Removing the assumption that workers always and appropriately wear PPE in making the whole chemical risk determination for NMP would result in three additional conditions of use driving EPA's unreasonable risk determination for NMP as a whole chemical. The three conditions of use affected by this change are: industrial and commercial use in ink, toner, and colorant products; industrial and commercial use in other uses in soldering materials; and industrial and commercial use in other uses in fertilizer and other agricultural chemical manufacturing—processing aids and solvents. Additionally, for five conditions of use, acute effects in addition to chronic effects would now drive the unreasonable risk to workers (the five conditions of use are: processing for incorporation into articles in paint additives and coating additives not described by other codes in transportation equipment manufacturing; industrial and commercial use in paints, coatings, and adhesive removers; industrial and commercial use in paints and coatings in lacquers, stains, varnishes, primers, and floor finishes, powder coatings (surface preparation); industrial and commercial use paint additives and coating additives in multiple manufacturing sectors; and industrial and commercial use in adhesives and sealants including binding agents, single component glues and adhesives, including lubricant additives, two-component glues, and adhesives including some resins) (Ref. 1).

The draft revision to the risk determination would clarify that EPA does not rely on the assumed use of PPE when making the risk determination for the whole substance. EPA is requesting comment on this potential change.

D. What is NMP?

NMP is a water-miscible, organic solvent that is often used as a substitute for halogenated solvents. NMP exhibits a unique set of physical and chemical properties that have proven useful in a range of industrial, commercial, and consumer applications. NMP has a wide range of uses, including in the production of paints and coatings, as a solvent for cleaning and degreasing, and in the manufacture of electronics. There are also a variety of consumer and commercial products that contain NMP, such as adhesives and sealants, as well as adhesive removers, automotive care products, and paints and coatings. NMP is both manufactured domestically and imported into the United States.

E. What conclusions did EPA reach about the risks of NMP in the 2020 TSCA risk evaluation and what conclusions is EPA proposing to reach based on the whole chemical approach and not assuming the use of PPE?

In the 2020 risk evaluation, EPA determined that NMP presents an unreasonable risk to health under the following conditions of use:

- Domestic manufacture;
- Manufacture (import);

- Processing as a reactant or intermediate in plastic material and resin manufacturing and other non-incorporative processing;
- Processing for incorporation into a formulation, mixture, or reaction product in multiple sectors;
- Processing for incorporation into articles—in lubricants and lubricant additives in machinery manufacturing;
- Processing for incorporation into articles in paint additives and coating additives not described by other codes in transportation equipment manufacturing;
- Processing for incorporation into articles as a solvent (which become part of product formulation or mixture), including in textiles, apparel, and leather manufacturing;
- Processing for incorporation into articles in other sectors, including in plastic product manufacturing;
- Processing in recycling;
- Processing for repackaging (wholesale and retail trade);
- Industrial and commercial use in paints, coatings, and adhesive removers;
- Industrial and commercial use in paints and coatings in lacquers, stains, varnishes, primers, and floor finishes, powder coatings (surface preparation);
- Industrial and commercial use in paint additives and coating additives not described by other codes in computer and electronic product manufacturing in electronic parts manufacturing;
- Industrial and commercial use paint additives and coating additives not described by other codes in computer and electronic product manufacturing in semiconductor manufacturing;
- Industrial and commercial use paint additives and coating additives in multiple manufacturing sectors;
- Industrial and commercial use as a solvent (for cleaning or degreasing) in electrical equipment, appliance and component manufacturing;
- Industrial and commercial use as a solvent (for cleaning or degreasing) in electrical equipment appliance and component manufacturing in semiconductor manufacturing;
- Industrial and commercial use in processing aids specific to petroleum production in petrochemical manufacturing, in other uses in oil and gas drilling, extraction, and support activities, and in functional fluids (closed systems);
- Industrial and commercial use in adhesives and sealants including binding agents, single component glues and adhesives, including lubricant additives, two-component glues, and adhesives including some resins;
- Industrial and commercial use in other uses in anti-freeze and de-icing products, automotive care products, and lubricants and greases;
- Industrial and commercial use in metal products not covered elsewhere and lubricant and lubricant additives including hydrophilic coatings;
- Industrial and commercial uses in other uses in laboratory chemicals;
- Industrial and commercial uses in other uses in lithium ion battery manufacturing;
- Industrial and commercial uses in other uses in cleaning and furniture care products including wood cleaners and gasket removers;
- Consumer use in adhesives and sealants (glues and adhesives including lubricant adhesives); and
- Disposal.

Under the proposed whole chemical approach to the NMP risk determination, the unreasonable risk from NMP would continue to be driven by risk from those same conditions of use. In addition, by removing the assumption of PPE use in making the whole chemical risk determination for NMP, three conditions of use in addition to the original 26 would drive the unreasonable risk:

- Industrial and commercial use in ink, toner, and colorant products (printer ink; inks in writing equipment);
- Industrial and commercial use in other uses in soldering materials;
- Industrial and commercial use in other uses in fertilizer and other agricultural chemical manufacturing in processing aids and solvents.

Overall, 29 conditions of use out of the 37 evaluated would drive the NMP whole chemical unreasonable risk determination.

III. Revision of the December 2020 Risk Evaluation

A. Why is EPA proposing to revise the risk determination for the NMP risk evaluation?

EPA is proposing to revise the risk determination for the NMP risk evaluation pursuant to TSCA section 6(b) and consistent with Executive Order 13990, (''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities (Refs. 3, 4, and 6). EPA is revising specific aspects of the first ten TSCA existing chemical risk evaluations in order to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment. For the NMP risk evaluation, this includes the draft revision: (1) Making the risk determination in this instance based on the whole chemical substance instead of by individual conditions of use and (2) Emphasizing that EPA does not rely on the assumed use of PPE when making the risk determination.

B. What are the draft revisions?

EPA is releasing a draft revision of the risk determination for the NMP risk evaluation pursuant to TSCA section 6(b). Under the revised determination, EPA preliminarily conclude that NMP, as evaluated in the risk evaluation as a whole, presents an unreasonable risk of injury to health under its conditions of use. This revision would replace the previous unreasonable risk determinations made for NMP by individual conditions of use, supersede the determinations (and withdraw the associated order) of no unreasonable risk for the conditions of use identified in the TSCA section 6(i)(1) no unreasonable risk order, and clarify the lack of reliance on assumed use of PPE as part of the risk determination.

These draft revisions do not alter any of the underlying technical or scientific information that informs the risk characterization, and as such the hazard, exposure, and risk characterization sections are not changed except to the extent that statements about PPE assumptions in section 2.4.1.1 (Occupational Exposures Approach and Methodology) and 4.2.2 (Risk Estimation for Worker Exposures for Occupational Use of NMP), of the NMP risk evaluation would be superseded. The discussion of the issues in this notice and in the accompanying draft revision to the risk determination would supersede any conflicting statements in the prior executive summary and sections 2.4.1.1 and 4.2.2 from the NMP risk evaluation and the response to comments document (Refs. 2 and 10). Additional policy changes to other chemical risk evaluations, including any consideration of potentially exposed or susceptible subpopulations and/or inclusion of additional exposure pathways, are not necessarily reflected in these draft revisions to the risk determination.

C. Will the draft revised risk determination be peer reviewed?

The risk determination (section 5 in the December 2020 risk evaluation) was not part of the scope of the peer review of the NMP risk evaluation by the Science Advisory Committee on Chemicals (SACC). Thus, consistent with that approach, EPA does not intend to conduct peer review of the draft revised unreasonable risk determination for the NMP risk evaluation because no technical or scientific changes will be made to the

hazard or exposure assessments or the risk characterization.

D. What are the next steps for finalizing revisions to the risk determination?

EPA will review and consider public comment received on the draft revised risk determination for the NMP risk evaluation and issue a final revised NMP risk determination. If finalized as drafted, EPA would also issue a new order to withdraw the TSCA section 6(i)(1) no unreasonable risk order issued in Section 5.4.1 of the 2020 NMP risk evaluation. This final revised risk determination would supersede the December 2020 risk determinations of no unreasonable risk. Consistent with the statutory requirements of TSCA section 6(a), the Agency would then propose risk management actions to address the unreasonable risk determined in the NMP risk evaluation.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Draft Revised Unreasonable Risk Determination for NMP, Section 5, June 2022.
2. EPA. Risk Evaluation for n-Methylpyrrolidone (NMP). EPA Document #740–R–18–009. December 2020. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0236-0081.*
3. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register**. 86 FR 7037, January 25, 2021.
4. Executive Order 13985. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. **Federal Register**. 86 FR 7009, January 25, 2021.
5. Executive Order 14008. Tackling the Climate Crisis at Home and Abroad. **Federal Register**. 86 FR 7619, February 1, 2021.
6. Presidential Memorandum. Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. **Federal Register**. 86 FR 8845, February 10, 2021.
7. EPA Press Release. EPA Announces Path Forward for TSCA Chemical Risk Evaluations. June 2021. *https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.*
8. EPA. Proposed Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 7562, January 19, 2017 (FRL–9957–75).
9. EPA. Final Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 33726, July 20, 2017 (FRL–9964–38).
10. EPA. Summary of External Peer Review and Public Comments and Disposition for n-Methylpyrrolidone (NMP). December 2020. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0236-0082.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 27, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–14108 Filed 6–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–023]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 17, 2022 10 a.m. EST Through June 27, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220086, Draft Supplement, NMFS, WA, The Makah Tribe Request to Hunt Gray Whales, Comment Period Ends: 08/15/2022, Contact: Grace Ferrara 206–526–6172.

EIS No. 20220087, Final, FERC, LA, MP66–69 Compression Relocation and Modification Amendment MP33 Compression Station Modification Amendment Project, Review Period Ends: 08/01/2022, Contact: Office of External Affairs 866–208–3372.

EIS No. 20220088, Draft, USAF, WY, Ground Based Strategic Deterrent Deployment and Minuteman III Decommissioning and Disposal, Comment Period Ends: 08/15/2022, Contact: Carla Pampe 318–456–7844.

EIS No. 20220089, Final, USACE, SC, Charleston Peninsula Coastal Storm Risk Management, Review Period Ends: 08/01/2022, Contact: Nancy Parrish 843–329–8050.

EIS No. 20220090, Draft Supplement, DOE, AK, Alaska LNG Project, Comment Period Ends: 08/15/2022, Contact: Mark Lusk 304–285–4145.

Amended Notice

EIS No. 20190132, Draft Supplement, USFS, MT, WITHDRAWN—Montanore Evaluation Project, Comment Period Ends: 08/08/2019, Contact: Craig Towery 406–293–6211.

Revision to FR Notice Published 06/21/2019; Officially Withdrawn per request of the submitting agency.

Dated: June 27, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–14107 Filed 6–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0125; FRL–9880–01–OCSPP]

Pesticide Reregistration Performance Measures and Goals; Annual Progress Report for 2019; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's progress report in meeting its performance measures and goals for pesticide reregistration during fiscal year 2019. This progress report also presents the total number of products registered under the ''fast-track'' provisions of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

DATES: Submit comments on or before August 30, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0125, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Rose Kyprianou, Antimicrobials Division (7510M), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0684; email address: *kyprianou.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the integration of tolerance reassessment with the reregistration process, and the status of various regulatory activities associated with reregistration and tolerance reassessment. Given the broad interest, the Agency has not attempted to identify all the specific entities that may be interested in this action.

II. What action is the Agency taking?

EPA is announcing the availability of EPA's progress report in meeting its performance measures and goals for pesticide reregistration during fiscal year 2019. The report for fiscal year 2019 discusses the completion of tolerance reassessment and describes the status of various regulatory activities associated with reregistration. The 2019 report also provides the total number of products reregistered and products registered under the ''fast-track'' provisions of FIFRA.

III. What is EPA's authority for taking this action?

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* requires EPA to publish information about EPA's annual achievements in meeting its performance measures and goals for pesticide reregistration.

IV. How can I get a copy of the report?

1. *Docket.* The 2019 report is available at *https://www.regulations.gov,* under docket ID number EPA–HQ–OPP–2014–0125.

2. *EPA Website.* The 2019 report is also available on EPA's website at *https://www.epa.gov/pesticide-reevaluation/reregistration-and-other-review-programs-predating-pesticide-registration.*

V. Can I comment on this report?

EPA welcomes input from stakeholders and the general public, see **ADDRESSES** for instructions. Any written comments received will be taken into consideration in the event that EPA determines that further action is warranted. EPA does not expect this report to lead to any particular action, and therefore is not seeking particular public comment.

1. *Submitting Confidential Business Information (CBI).* Do not submit Confidential Business Information (CBI) information to EPA through regulations.gov or through email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you email to EPA, mark the outside of the disk or CD–ROM as CBI then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

Authority: 7 U.S.C. 136a–1(l).

Dated: June 28, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–14149 Filed 6–30–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10074	Founders Bank	Worth	IL	07/02/2009

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Section, 600 North Pearl, Suite 700, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this timeframe.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 28, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–14136 Filed 6–30–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Federal Deposit Insurance Corporation Amended Restoration Plan

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC's Board

of Directors (Board) adopt a restoration plan when the Deposit Insurance Fund (DIF or fund) reserve ratio falls below the minimum of 1.35 percent or is expected to within 6 months.[1] Extraordinary growth in insured deposits during the first and second quarters of 2020 caused the DIF to decline below the statutory minimum of 1.35 percent as of June 30, 2020. On September 15, 2020, the FDIC established a Restoration Plan (Plan) to restore the DIF to at least 1.35 percent by September 30, 2028, maintaining the assessment rate schedule in place at the time.[2]

Under the Plan, the FDIC is monitoring deposit balance trends, potential losses, and other factors that affect the reserve ratio. While insured deposit growth rates remained elevated through the first quarter of 2021, such growth decelerated for the remaining quarters of 2021 through the first quarter of 2022 and was slightly above the historical average annual growth rate. Those insured deposits that resulted from extraordinary growth in the first half of 2020 and the first quarter of 2021 as the result of actions taken by monetary and fiscal authorities, and by individuals, businesses, and financial market participants in response to the Coronavirus Disease (COVID–19) pandemic do not appear to have receded as of the first quarter of 2022.

Unrealized losses on available-for-sale securities in the DIF portfolio contributed to a relatively flat DIF balance in the first quarter of 2022. As of March 31, 2022, the industry weighted average assessment rate nearly matched the pre-pandemic average, and has been consistently below the level projected when the Board originally adopted the Plan. Consequently, growth in insured deposits outpaced growth in the DIF, resulting in a decline in the reserve ratio of 4 basis points to 1.23 percent as of March 31, 2022.

The FDIC updated its analysis and projections for the fund balance and reserve ratio to estimate how changes in insured deposit growth and assessment rates affect when the reserve ratio would reach the statutory minimum of 1.35 percent. Based on this analysis, the FDIC projects that, absent an increase in assessment rates, the reserve ratio is at risk of not reaching the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028.

Assuming relatively favorable conditions, in which some of the excess insured deposits resulting from the pandemic are retained and the average assessment rate is higher than experienced over the last year, the FDIC projects that the reserve ratio would reach the statutory minimum of 1.35 percent close to the statutory deadline. Similarly, under a scenario in which no excess deposits are retained and the average assessment rate is lower, but the FDIC increases assessments by 1 basis point, the FDIC projects that the reserve ratio would reach the statutory minimum of 1.35 percent close to the statutory deadline. In both of these scenarios, any number of uncertain factors—including unexpected losses, accelerated insured deposit growth, or lower weighted average assessment rates due to improving risk profiles of institutions—could materialize and could easily prevent the reserve ratio from reaching the minimum by the statutory deadline. As a result, these scenarios carry higher risk that the FDIC would have to increase assessment rates in the face of a future downturn or industry stress.

The FDIC also projected the effects of a 2 basis point increase on scenarios that applied two sets of reasonable assumptions for insured deposit growth and average assessment rates. An increase of 2 basis points under both scenarios would result in the reserve ratio reaching the minimum of 1.35 percent approximately two years from now, building in a buffer in the event of uncertainties, as described above, that could stall or counter growth in the reserve ratio. Furthermore, reaching the statutory minimum reserve ratio of 1.35 percent ahead of the statutory deadline would mean that the FDIC would exit its Restoration Plan. If the reserve ratio subsequently declined below the statutory minimum, the FDIC would establish a new restoration plan and would have an additional eight years to restore the reserve ratio.

The banking industry remained resilient moving into the second half of 2022 despite the extraordinary challenges of the pandemic and recent economic uncertainties.[3] Strong liquidity and capital levels should help to mitigate any potential unexpected credit stress across loan portfolios. Given the relative strength in the condition of the banking industry over the past several quarters, increasing assessment rates beginning in 2023 would reduce the likelihood that the FDIC would need to later impose a pro-cyclical increase in assessment rates during a potential future period of banking industry stress.

On balance, the FDIC views a uniform increase in initial base deposit insurance assessment rates of 2 basis points as the most appropriate and most straightforward manner in which to achieve the objective of increasing the likelihood that the reserve ratio would reach the statutory minimum of 1.35 percent by the statutory deadline of September 30, 2028. Therefore, the FDIC is amending the Plan to incorporate a uniform increase in initial base deposit insurance assessment rates of 2 basis points, as described below. The FDIC is also concurrently publishing a notice of proposed rulemaking to propose adoption of these higher assessment rates, beginning with the first quarterly assessment period of 2023.

The Amended Restoration Plan

Therefore, the FDIC amends the Restoration Plan adopted on September 15, 2020, as follows:

1. FDIC will increase initial base deposit insurance assessment rates uniformly by 2 basis points for all insured depository institutions (IDIs).

2. The FDIC will have the accompanying notice of proposed rulemaking proposing to increase initial base deposit insurance assessment rates uniformly by 2 basis points, effective the first quarterly assessment period of 2023, published in the **Federal Register** as soon as possible.

3. The FDIC projects that the rates proposed in the notice of proposed rulemaking would increase the likelihood that the reserve ratio would be restored to 1.35 percent by September 30, 2028.

4. The FDIC will continue to monitor deposit balance trends, potential losses, and other factors that affect the reserve ratio.

5. At least semiannually, the FDIC will update its analysis and projections for the fund balance and reserve ratio and, if necessary, recommend any modifications to the Amended Restoration Plan.

6. This Amended Restoration Plan shall be implemented immediately.

To meet the statutory requirement, the reserve ratio must be restored to at least 1.35 percent no later than September 30, 2028, the statutory deadline by which the reserve ratio must be restored to the statutory minimum of 1.35 percent.[4]

[1] 12 U.S.C. 1817(b)(3)(B) and (E).

[2] *See* 85 FR 59306 (Sept. 21, 2020). Under the FDI Act, a restoration plan must restore the reserve ratio to at least 1.35 percent within 8 years of establishing the plan, absent extraordinary circumstances. 12 U.S.C. 1817(b)(3)(E)(ii).

[3] As used in this Notice, the term ''bank'' is synonymous with the term ''insured depository institution'' as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

[4] The reserve ratio is based on total estimated insured deposits at the end of a given quarter. The

Continued

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 21, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–13582 Filed 6–30–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than August 1, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Two Rivers Financial Group, Inc., Burlington, Iowa;* to acquire Lee County Bank, Fort Madison, Iowa.

FDIC will use data as of September 30, 2028, the first quarter-end date for which the reserve ratio will be known after September 15, 2028, the end date of the 8-year period.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14072 Filed 6–30–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than August 1, 2022.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261, or *Comments.applications@rich.frb.org*:

1. *Burke and Herbert Financial Services Corp., Alexandria, Virginia;* to become a bank holding company by acquiring Burke and Herbert Bank and Trust Company, Alexandria, Virginia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14076 Filed 6–30–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than July 15, 2022.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Patriot Financial Partners, IV, L.P., Patriot Financial Partners GP IV, L.P., Patriot Financial Partners GP IV, LLC., Patriot Financial Partners Parallel IV L.P., Patriot Financial Advisors, L.P., Patriot Financial Advisors LLC, W. Kirk Wycoff, James J. Lynch and James F. Deutsch, all of Radnor, Pennsylvania;* to acquire voting shares of Avidbank Holdings, Inc., and thereby indirectly acquire voting shares of Avidbank, both of San Jose, California.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14070 Filed 6–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement to Fund India Council of Medical Research (IMCR) and ICMR Institutions: National Institute of Virology (NIV), Pune and National Institute of Epidemiology (NIE), Chennai; Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The CDC published a document in the **Federal Register** of June 15, 2022, concerning a Notice of Award. The document contained incorrect funding amounts.

FOR FURTHER INFORMATION CONTACT: Shana Eatman, Centers for Disease Control and Prevention, 1825 Century Center, MS V18–3, Atlanta, GA 30345, Telephone: 770–488–3933, E-Mail: *DGHPNOFOs@cdc.gov*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 15, 2022, in FR Doc. 2022–12850, on page 36133, in the first column, in the **SUMMARY**, correct to read:

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces three (3) separate awards within the government of India to include the Indian Council of Medical Research (ICMR) New Delhi, National Institute of Virology (NIV) and National Institute of Epidemiology (NIE). For ICMR New Delhi, the award is for approximately $8,165,000 with an expected total funding of approximately $24,495,000. For NIV, the award is for approximately $8,165,000 with an expected total funding of approximately $24,495,000. For NIE, the award is for approximately $8,165,000 with an expected total funding of approximately $24,495,000. The total 5-year period amount for the three recipients is $122,475,000. The awards will accelerate progress toward an India safe and secure from infectious disease threats through ICMR institutions' focus on emerging and re-emerging pathogens, including detecting, and controlling zoonotic disease outbreaks through a One Health approach; evaluating vaccine safety monitoring systems; capacitating the public health workforce in field epidemiology and outbreak response; and combating antimicrobial resistance.

In the **Federal Register** of June 15, 2022, in FR Doc. 2022–12850, on page 36133, in the second column, Amount of Award, correct to read:

Amount of Award: $8,165,000 in Federal Fiscal Year (FFY) 2022 funds per institution, with a total estimated $122,475,000 for the 5-year period of performance, subject to availability of funds. Please note, the NOFO funding strategy is as follows: $660,000 for Core Component 1, and $7,505,000 in Approved but Unfunded (ABU) Components for each recipient.

Dated: June 28, 2022.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–14139 Filed 6–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC or Board). This meeting is closed to the public.

DATES: The meeting will be held on July 26, 2022, from 1:00 p.m. to 5:00 p.m., EDT (CLOSED).

ADDRESSES: Zoom Virtual Meeting

FOR FURTHER INFORMATION CONTACT: Arlene Greenspan, DrPH, MPH, PT, Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341; Telephone: (770) 488–1279; Email: *ncipcbsc@cdc.gov.*

SUPPLEMENTARY INFORMATION: The meeting referenced above will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463 (5 U.S.C. app. 2).

Purpose: The Board will: (1) conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury. The BSC, NCIPC makes recommendations regarding policies, strategies, objectives, and priorities; reviews progress toward injury prevention goals; and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, as well as the structure, progress, and performance of intramural programs. The Board provides guidance on extramural scientific program matters, including the: (1) review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contract applications received in response to funding opportunity announcements as they relate to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios; and (5) review of program proposals.

Matters To Be Considered: The closed meeting will focus on the Secondary Peer Review of extramural research grant applications received in response to five (5) Notices of Funding Opportunities (NOFOs): RFA–CE–22–003—''Rigorously Evaluating Programs and Policies to Prevent Child Sexual Abuse (CSA) (U01)''; RFA–CE–22–005—''Research Grants for Preventing Violence and Violence Related Injury (R01)''; RFA–CE–22–006—''Research Grants to Evaluate the Effectiveness of Physical Therapy-based Exercises and Movements Used to Reduce Older Adults Falls(U01)''; RFA–CE–22–007—''Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline''; and RFA–CE–22–008—''Using Data Linkage to Understand Suicide Attempts, Self-Harm and Unintentional Drowning Deaths (U01).'' Agenda items

are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–14154 Filed 6–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the Sierra Leone Ministry of Health and Sanitation; Cancellation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $450,000 for Year 1 of funding to the Sierra Leone (SL) Ministry of Health and Sanitation.

DATES: The notice of award was cancelled on June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Trong Ao, Center for Global Health, Centers for Disease Control and Prevention, CDC Ghana Office, US Embassy, 24 Fourth Circular Road Cantonments, Accra, Ghana, Telephone: 800–232–6348, E-Mail: *tfa8@cdc.gov.*

SUPPLEMENTARY INFORMATION: On February 4, 2022 CDC announced a single-source award will support the Sierra Leone (SL) Ministry of Health and Sanitation to implement HIV strategic information and laboratory strengthening activities in SL (87 FR 6550). This award is cancelled in its entirety.

Dated: June 28, 2022.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–14141 Filed 6–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, limited only by the number of audio conference lines and internet conference accesses, which is 200 combined. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining a teleconference line and/or computer connection (information below).

DATES: The meeting will be held on August 17, 2022, from 1:00 p.m. to 6:00 p.m., EDT, and August 18, 2022, from 1:00 p.m. to 4:00 p.m., EDT. A public comment session will be held on August 17, 2022, at 5:00 p.m., EDT, and will conclude at 6:00 p.m., EDT, or following the final call for public comment, whichever comes first.

Written comments must be received on or before August 10, 2022.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health (NIOSH), CDC, 1090 Tusculum Avenue, Mailstop C–34, Cincinnati, Ohio 45226.

Meeting Information: The USA toll-free dial-in numbers are: +1 669 254 5252 US (San Jose); and +1 646 828 7666 US (New York). The meeting ID is: 160 472 7559; the passcode is: 83069065; and the Web conference by Zoom meeting connection is: *https://cdc.zoomgov.com/j/1604727559?pwd=ajVQSTgveiszWEZaZTMxSkNsRSszUT09.*

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226; Telephone: (513) 533–6800; Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, was renewed at appropriate intervals, was rechartered on March 22, 2022, and will terminate on March 22, 2024.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on the following: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; Procedures Review Finalization/Document Approvals; Update on Review of SEC–00188 Sandia Petition Addendum 2; Evaluation of Issues in the Use of General Area Air Sampling for Argonne National Laboratory–West Internal Dose Assessment; and a Board Work Session. Agenda items are subject to change as priorities dictate.

For additional information, please contact Toll Free 1–800–232–4636.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–14152 Filed 6–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Annual Report on Households Assisted by the Low Income Home Energy Assistance Program (LIHEAP) (Office of Management and Budget (OMB) #0970–0060)

AGENCY: Office of Community Services (OCS), Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: OCS, Division of Energy Assistance, is requesting a substantial change of the Household Report (OMB #0970–0060, expiration May 31, 2025). Grant recipients complete the Household Report on an annual basis, completing either the Long Form or the Short Form version of the report. Submission of the completed report is one requirement for Low Income Home Energy Assistance Program (LIHEAP) grant recipients applying for federal LIHEAP block grant funds. OCS proposes substantive changes, including the addition of reporting requirements for assisted applicants and household member demographic characteristics on the Household Report Long Form and Short Form, and the removal of reporting requirements collecting counts of applicant households by assistance type and poverty interval on the Household Report Long Form.

DATES: *Comments are due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: States, the District of Columbia, and the Commonwealth of Puerto Rico are required to complete the Household Report-Long Form on an annual basis. The Long Form collects the following information:

- Assisted households, by type of LIHEAP assistance and funding source;
- Assisted households receiving bill payment assistance, by funding source;
- Assisted households receiving any type of LIHEAP assistance, by funding source;
- Assisted households by poverty interval, by type of LIHEAP assistance and funding source;
- Assisted households, by type of LIHEAP assistance and funding source, having at least one vulnerable member who is at least 60 years or older, disabled, or 5 years old or younger;
- Assisted households receiving any type of LIHEAP assistance or funding source, having at least one member 60 years or older, disabled, or 5 years old or younger.

Tribal grant recipients and other U.S. territory grant recipients are required to complete the Household Report-Short Form on an annual basis. The Short Form collects data only on the number of households, by funding source, receiving heating, cooling, energy crisis, and/or weatherization benefits.

The information reported in the Household Report Long Form and Short Form is being collected for the Department's annual LIHEAP Report to Congress. The data also provides information about the need for LIHEAP funds. Finally, the data are used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993. The data elements will allow the accuracy of measuring LIHEAP targeting performance and LIHEAP cost efficiency.

ACF is proposing changes to the Household Report Long Form and Short Form beginning with FY 2023 reporting. These changes include additional reporting requirements for assisted household and household member demographic characteristics, and the removal of reporting requirements collecting counts of applicant households by assistance type and poverty interval on the Household Report Long Form. The additional reporting requirements include the following:

1. Number of Households by Owner/Renter Status (own, rent with utilities billed separately, rent with utilities in rental fee, other). [This is optional for FY 2023 reporting and required beginning with FY 2024 reporting].
2. Number of Assisted Applicants by Ethnicity. Grant recipients will report on assisted applicants by ethnicity according to standard census categories. [This is required beginning with FY 2023 reporting].
3. Number of Assisted Applicants by Race. Grant recipients will report on assisted applicants by race according to standard census categories. [This is required beginning with FY 2023 reporting].
4. Number of Assisted Applicants by Gender. Grant recipients will report on assisted applicants by gender. [This is required beginning with FY 2023 reporting].
5. Number of Assisted Household Members by Ethnicity. Grant recipients will report on assisted household members by ethnicity according to standard census categories. [This is optional for FY 2023 reporting and required beginning with FY 2024 reporting].
6. Number of Assisted Household Members by Race. Grant recipients will report on assisted household members by race according to standard census categories. [This is optional for FY 2023 reporting and required beginning with FY 2024 reporting].
7. Number of Assisted Household Members by Gender. Grant recipients will report on assisted household members by gender. [This is optional for FY 2023 reporting and required beginning with FY 2024 reporting].

The proposed additions will provide OCS with critical data that is needed to evaluate if LIHEAP is equitably serving communities across the country. The collection of demographic data including owner/renter status, race, ethnicity, and gender will allow OCS to conduct analysis disaggregated by these variables to assess whether LIHEAP resources are equitably distributed. Therefore, this data collection aligns with the goals of Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). Additionally, collecting demographic data in LIHEAP will bring the program into alignment with other programs across OCS including the Community Services Block Grant, which currently collects demographic data on beneficiaries, and the Low Income Household Water Assistance Program (LIHWAP), which will collect demographic data on beneficiaries in FY 2023.

To minimize reporting burden to the greatest extent possible, and in recognition of the significant overlap in LIHEAP and LIHWAP grant recipients, OCS is proposing to use the same demographic measures included in the LIHWAP Annual Report in the LIHEAP Household Report. OCS has also removed the reporting requirements for applicant households by assistance type and poverty interval on the Household Report Long Form to offset some of the additional reporting burden entailed by the demographic data collection.

Respondents: State governments, tribal governments, U.S. territories, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Assisted Household Report-Long Form	56	1	67	3,752
Assisted Household Report-Short Form	151	1	10	1,510
Household Application	6,160,000	1	1	6,160,000

Estimated Total Annual Burden Hours: 6,165,262.

Please note that the above estimate accounts for the burden this data collection entails on LIHEAP applicants. In previous years, OCS has not included an estimate of the burden on households. While OCS does not mandate that LIHEAP grant recipients use a standard household application, we know that grant recipients collect many of the required Household Report data elements through their household application. The annual burden for the household application indicated above accounts for the time it will take LIHEAP applicants to provide the data required by the current Household Report as well as the proposed demographic data elements. To calculate this burden, we used an estimate for the annual number of LIHEAP household applicants multiplied by an average of an hour to provide the data required by the Household Report.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 8629 and 45 CFR 96.92.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–14057 Filed 6–30–22; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Older Americans Act, Title VI Parts A/B and C Grants OMB Control Number 0985–0064

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed extension without change information collection request and solicits comments on the information collection requirements related to the Application for Older Americans Act, Title VI Parts A/B and C Grants performance reporting.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by August 30, 2022.

ADDRESSES: Submit electronic comments on the collection of information to: Jasmine Aplin. Submit written comments on the collection of information to the Administration for Community Living, Washington, DC 20201, Attention: Jasmine Aplin.

FOR FURTHER INFORMATION CONTACT: Jasmine Aplin, Administration for Community Living, Washington, DC 20201, *Jasmine.Aplin@acl.hhs.gov*, (202) 795–7453.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. A Collection of information includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

ACL is responsible for administering the Title VI A/B (Nutrition and Supportive Service) and C (Caregiver) grants. The purpose of this data collection is to improve and standardize the format of the application. The instrument will collect data as prescribed by the Older Americans Act Section 612(a), 614(a) and 45 CFR 1326.19 related to the eligibility of Federally recognized Tribes and Native Hawaiian organizations for grant funds under this program and their capacity to deliver services to elders.

The Application for Older Americans Act, Title VI A/B and C Grants collects information on the ability of federally recognized American Indian, Alaskan Native and Native Hawaiian organizations to provide nutrition, supportive, and caregiver services to elders within their service area. Applicants are required to provide a description of their organization's service area, the number of eligible elders in their service area, and their ability to deliver services and sign assurances that the organization will comply with all applicable laws and regulations.

This is an extension of a currently approved information collection. The proposed data collection materials have been updated to better align with the requirements of the Older Americans Act and Federal regulations, as well as to improve data quality and grantee accountability. Furthermore, this grantee application will better line up with the Title VI Program Performance Report under 0985–0007. This data collection will also support ACL in tracking performance outcomes and efficiency measures with respect to the annual and long-term performance targets established in compliance with the Government Performance Results Modernization Act (GPRMA).

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden:

Title VI funding is broken into three categories. Parts A and B are for nutritional and supportive programming, with Part A being restricted to American Indian and Alaska Native grantees, and Part B restricted to Native Hawaiian grantees. Part C is for caregiver programming. All Part C grantees must have Part A/B funding, but not all Part A/B grantees will have Part C programs. Therefore, there are likely to be 295 unique respondents, but only 250 will have to complete all three portions of the application. This application covers all three parts of Title VI.

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
Title VI Application Part A/B	295	1	2.75	270.4
Title VI Application Part C	250	1	1.5	125
Total	.....	.....	4.25	395.4

The number of burden hours associated with the Title VI, Part C, data collection was calculated as 811.25. However, since this instrument is used only once every three years results in an annualized number of 270.4 hours. Similarly, the total hours associated with the Title VI, Part C, application is 375.

Dated: June 27, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–14079 Filed 6–30–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; of the Review of the National Standards for Culturally and Linguistically Appropriate Services (CLAS) at ACL [OMB #0985–New]

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This IC solicits comments on the information collection requirements relating to the Review of the National Standards for Culturally and Linguistically Appropriate Services (CLAS) at ACL.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by August 30, 2022.

ADDRESSES: Submit electronic comments on the collection of information to: Kristen Hudgins, *Kristen.Hudgins@acl.hhs.gov,* 202–795–7732. Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Kristen Hudgins.

FOR FURTHER INFORMATION CONTACT: Kristen Hudgins, *Kristen.Hudgins@acl.hhs.gov,* 202–795–7732

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or

provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Administration for Community Living (ACL) is currently engaged in an effort to better understand how ACL programs support grantees to apply CLAS Standards and related diversity, equity, and inclusion (DEI) priorities in their programming. While the previous research effort focused on the perspective of ACL staff and national associations and advocacy organizations; this new IC will focus on a broader scope of respondents. In this IC, ACL will be reaching out to ACL-funded grantees. By capturing the perspectives of these grantees, this research aims to build on both our current knowledge of the CLAS Standards and DEI landscape at ACL, as well as to enhance our understanding of how to support the aging and disability networks to strengthen their CLAS Standards and DEI practices and priorities.

The IC, as well as analyses of available NSOAAP, Annual Performance data or other ACL data, would help address the following key research questions:

1. Who does ACL serve?

a. How do ACL clients differ by demographic characteristics and/or social determinants of health (*e.g.,* language, culture, race/ethnicity, age, disability status)?

b. Are there any gaps in the types of people (or clients) served?

2. How are ACL program grantees meeting the needs of these diverse people (or clients)?

a. What data do they collect that would help ensure they meet diverse client needs?

b. What resources do grantee organizations need to support the cultural and linguistic needs of their clients?

Five focus groups with ACL grantees, comprised of 8–10 participants each (with each participant representing one grantee entity), would be conducted to help ACL better understand the current service provider grantee landscape related to cultural and linguistic needs and other DEI activities. Data gathered from these focus groups would also help refine a web-based survey that would be administered to a minimum of 400 service provider grantees. The survey would allow for broader reach to help ACL understand both how provider grantees address diverse client needs and what additional resources provider grantee organizations may need to support the cultural, linguistic, and DEI needs of the people they serve. Together, these data will help ACL better understand how grantees are meeting the needs of their clients, as well as the extent of unmet CLAS/DEI needs that exist for clients and the extent to which those unmet needs may limit service access. The proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

The grantee focus groups will include no more than 50 individuals representing grantee organizations across the US. The burden for their participation is estimated at 1.5 hours per participant, for a total of 75 hours.

A minimum of 400 grantees are expected to respond to the web-based survey. The approximate burden for survey completion may be ten minutes per respondent for a total estimate of 4,000 minutes. The estimated survey completion burden includes time to review the instructions, read the questions and complete the responses.

IC BURDEN CHART

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Grantee focus groups	50	1	1.50	75.00
Web-based grantee survey	400	1	0.16	66.67
Total	480	1	1.66	141.67

Dated: June 27, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–14078 Filed 6–30–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory

committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committee regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by August 15, 2022, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by August 15, 2022. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2023.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov or* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *Kimberly.Hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Atreya@fda.hhs.gov*.	Allergenics Products Advisory Committee.
Moon Hee Choi, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Advisory Committee, Non-Prescription Drugs Advisory Committee.
She-Chia Chen, Center for Dugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31 Rm. 2438, Silver Spring, MD 20993–0002, 240–402–5343, *She-Chia.Chen@fda.hhs.gov*.	Antimicrobial Drugs Advisory Committee.
Jessica Seo, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–7699, *Jessica.Seo@fda.hhs.gov*.	Arthritis Drugs Advisory Committee, Peripheral and Central Nervous System Drugs Advisory Committee.
Joyce Yu, Center for Drugs Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–837–7126, *Joyce.Yu@fda.hhs.gov*.	Cardiovascular Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee.
LaToya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drugs Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993–0002, 240–402–2507, *Takyiah.Stevenson@fda.hhs.gov*.	Pharmacy Compounding Drugs Advisory Committee.
Joyce Frimpong, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2462, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel, Clinical Chemistry and Clinical Toxicology Devices Panel, Ear, Nose and Throat Devices Panel, Gastroenterology and Urology Devices Panel, General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel, Immunology Devices Panel, Microbiology Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Devices Panel, Obstetrics and Gynecology Devices Panel, Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel, Hematology and Pathology Devices Panel, Molecular and Clinical Genetics Devices Panel, Ophthalmic Devices Panel, Radiology Devices Panel.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs Administration (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Allergenics Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, surgery, epidemiology or statistics, and related specialties.	1—Voting	April 1, 2023.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	May 1, 2023.
Arthritis Drugs Advisory Committee—Knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties.	1—Voting	December 1, 2023.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	February 1, 2023.
Cardiovascular Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	July 1, 2023.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	July 1, 2022.
Pharmacy Compounding Drugs Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and other related specialties.	1—Voting	October 1, 2023.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	July 1, 2022.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otologists, neurotologists, audiologists	1—Nonvoting	November 1, 2023.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Dental Products Devices Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.,* pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmologists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	3—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Allergenics Drugs Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease, as well as the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the

products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs.

C. Anesthetic and Analgesic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

D. Nonprescription Drugs Advisory Committee

Review and evaluate available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advise the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee will serve as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

E. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

F. Arthritis Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

G. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

H. Cardiovascular Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

K. Pharmacy Compounding

Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

L. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

M. Medical Devices Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. Except for the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Devices Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

N. National Mammography Quality Assurance Advisory Committee

Advise the Agency on the following: development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; and reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will exist enough medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an

affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES** section of this document), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14135 Filed 6–30–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–E–0452; FDA–2021–E–0453]

Determination of Regulatory Review Period for Purposes of Patent Extension; IMCIVREE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for IMCIVREE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 30, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 28, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 30, 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 Nos. FDA–2021–E–0452; FDA–2021–E–0453 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; IMCIVREE.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, IMCIVREE (setmelanotide acetate) indicated for chronic weight management in adult and pediatric patients 6 years of age and older with obesity due to proopiomelanocortin (POMC), proprotein convertase subtilisin/kexin type 1 (PCSK1), or leptin receptor (LEPR) deficiency confirmed by genetic testing demonstrating variants in POMC, PCSKI, or LEPR genes that are interpreted as pathogenic, likely pathogenic, or of uncertain significance. Subsequent to this approval, the USPTO received patent term restoration applications for IMCIVREE (U.S. Patent Nos. 8,039,435; 9,458,195) from RHYTHM PHARMACEUTICALS, INC. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated June 8, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of IMCIVREE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IMCIVREE is 3,304 days. Of this time, 3,060 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 11, 2011. The applicant claims November 12, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 11, 2011, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 27, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for IMCIVREE (NDA 213793) was initially submitted on March 27, 2020.

3. *The date the application was approved:* November 25, 2020. FDA has verified the applicant's claim that NDA 213793 was approved on November 25, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 879 days or 1,774 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14134 Filed 6–30–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the July 25, 2022 meeting the Advisory Council will hear updates from federal workgroups on efforts undertaken in the last quarter and an overview of the National Institutes of Health budget for ADRD research. The research, clinical care, long-term services and supports, and risk reduction subcommittees will present recommendations and the Council will vote on adopting them.

DATES: The meeting will be held on July 25, 2022 from 9:30 a.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be a hybrid meeting that allows both in-person and virtual participation. The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 3:30 p.m. to 4:00 p.m. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Tuesday, July 19. Registered commenters may provide their comments either in-person or virtually. On Friday, July 22, registered commenters attending virtually will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. Note: There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:15 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. All participant audio lines will be muted for the duration of the meeting and only unmuted by the Host at the time of the participant's public comment. Should you have questions during the session email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Tuesday, July 26. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Tuesday, July 26 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov.* Note: The meeting will be available to the public live at *www.hhs.gov/live.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: federal updates, recommendations.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available, after the meeting. This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live.* Participants joining in person should note that seating may be limited. Those wishing to attend the meeting in person must send an email to *napa@hhs.gov* and put ''July 25 Meeting Attendance'' in the subject line by Tuesday, July 19 so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

The Department of Health and Human Services follows the CDC COVID–19 Community Level in determining masking and social distancing guidelines. Please visit the Safer Federal Workforce web page for masking and social distancing guidelines for more information.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: June 28, 2022.

Benjamin Sommers,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation, Deputy Assistant Secretary for Health Policy.

[FR Doc. 2022–14146 Filed 6–30–22; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Use of a Single Institutional Review Board for Cooperative Research Draft Guidance

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, is announcing the availability of a draft guidance document entitled, ''Use of a Single Institutional Review Board for Cooperative Research Draft.''

DATES: Submit written comments by August 30, 2022.

ADDRESSES: Submit written requests for a single copy of the draft guidance document entitled ''Use of a Single Institutional Review Board for Cooperative Research Draft Guidance,'' to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–453–8420. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance documents.

You may submit comments identified by docket ID number HHS–OASH–2022–0011 (Use of a Single Institutional Review Board for Cooperative Research Draft Guidance), by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the docket ID number and click on ''Search.'' On the next page, click the ''Comment Now'' action and follow the instructions.
- *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]:* Natalie Klein, Ph.D., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Natalie Klein, Ph.D., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *Natalie.klein@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP is announcing the availability of a draft guidance document for public comment titled ''Use of a Single Institutional Review Board for Cooperative Research.'' The document is intended primarily for institutions, institutional review boards (IRBs), investigators, institutional officials, and other human research protection staff.

The draft guidance document applies to activities that are conducted or supported by HHS. It is intended primarily to help entities implement the requirement for use of a single IRB for cooperative research (subpart A of 45 CFR part 46.114). In particular, the draft guidance addresses the following topics:

(1) What is cooperative research?

(2) When must an institution rely on a single IRB for approval of cooperative research?

(3) Who decides which IRB will be the IRB of record for the purposes of regulatory compliance?

(4) Can an institution that is not required to comply with 45 CFR 46.114(b)(1) for a particular study still choose to rely on a single IRB for review of cooperative research?

(5) Can an institution involved in cooperative research choose to conduct its own IRB review of the research even though review is required by a single IRB that is located elsewhere?

(6) Are there documentation requirements for use of a single IRB in cooperative research?

(7) What are some of the operational capacities an IRB should have in order to serve as a single IRB?

(8) What are the responsibilities of the reviewing IRB with respect to information pertaining to sensitivity to community attitudes and the local context for proposed research?

(9) What are the responsibilities of the reviewing IRB pertaining to applicable State and local laws?

II. Electronic Access

Persons with access may obtain the draft guidance documents on OHRP's website at h*ttps://www.hhs.gov/ohrp/regulations-and-policy/requests-for-comments/index.html.*

Jerry Menikoff,

Director, Office for Human Research Protections.

[FR Doc. 2022–14123 Filed 6–30–22; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0001]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 30, 2022.

ADDRESSES: Submit your comments to *sagal.musa@hhs.gov* or by calling (202) 205–2634.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 4040–0001–60D and project title for reference, to Sagal Musa, email: *sagal.musa@hhs.gov,* or call (202) 205–2634 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Application for Federal Assistance SF 424 R&R forms.

Type of Collection: Renewal.

OMB No. 4040–0001.

Abstract: The SF–424 R&R family of forms provides the Federal grant-making agencies an alternative to the Standard Form 424 data set and form. Agencies may use the SF–424 R&R forms for grant programs not required to collect all the data that is required on the SF–424 core data set and form. This 4040–0001 collection encompasses 18 forms.

Type of respondent: The SF–424 R&R family of forms are used by organizations to apply for Federal financial assistance in the form of grants. These forms are submitted to the Federal grant-making agencies for evaluation and review.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
SF–424 R&R Multi-Project Cover	Grant Applicants	1,519	1	1	1,519
SF424 (R&R)	Grant Applicants	109,455	1	1	109,455
SBIR/STTR Information	Grant Applicants	6,376	1	1	6,376
RR FedNonFed Budget	Grant Applicants	0	1	1	0
Research and Related Senior/Key Person Profile (Expanded.	Grant Applicants	108,543	1	1	108,543
Research And Related Other Project Information.	Grant Applicants	37,603	1	1	37,603
Research & Related Budget	Grant Applicants	63,909	1	1	63,909
Research & Related Subaward Budget (Total Fed + Non-Fed) Attachment(s) Form.	Grant Applicants	0	1	1	0
Research & Related Subaward Budget (Total Fed + Non-Fed) 5 YR 30 ATT.	Grant Applicants	0	1	1	0
Research & Related Senior/Key Person Profile.	Grant Applicants	695	1	1	695
Research & Related Personal Data	Grant Applicants	0	1	1	0
Research & Related Multi-Project 10 Year Budget.	Grant Applicants	3,847	1	1	3,847
Research & Related Budget 10 YR ..	Grant Applicants	0	1	1	0
R&R Subaward Budget Attachment(s) Form 5 YR 30 ATT.	Grant Applicants	59,767	1	1	59,767
R&R Subaward Budget Attachment(s) Form 10 YR 30 ATT.	Grant Applicants	1,023	1	1	1,023
R&R Subaward Budget Attachment(s) Form 10 YR. 10 ATT	Grant Applicants	0	1	1	0
R&R Subaward Budget Attachment (s) Form.	Grant Applicants	271	1	1	271
R&R R Multi-Project Subaward Budget Attachment(s) Form 10 YR 30 ATT.	Grant Applicants	1,023	1	1	1,023
Total	.....	394,031	1	1	394,031

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–14156 Filed 6–30–22; 8:45 am]

BILLING CODE 4150–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0004]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 30, 2022.

ADDRESSES: Submit your comments to *sagal.musa@hhs.gov* or by calling (202) 205–2634.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 4040–0004–60D and project title for reference, to Sagal Musa, email: *sagal.musa@hhs.gov,* or call (202) 205–2634 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Application for Federal Assistance (SF–424).

Type of Collection: Renewal.

OMB No. 4040–0004.

Abstract: The Application for Federal Assistance (SF–424) form provides the Federal grant-making agencies with a common and standard form for organizations to apply for financial assistance.

Type of Respondent: Organizations seeking financial assistance. This form is submitted to the Federal grant-making agencies for evaluation and review.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Application for Federal Assistance (SF–424).	Grant Applicants	20,803	1	1	20,803
Total		*20,803*	1	1	20,803

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–14159 Filed 6–30–22; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0010]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 30, 2022.

ADDRESSES: Submit your comments to *sagal.musa@hhs.gov* or by calling (202) 205–2634.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 4040–0010–60D and project title for reference, to Sagal Musa, email: *sagal.musa@hhs.gov,* or call (202) 205–2634 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Project/Performance Site Location(s), Project Abstract, and Key Contacts forms.

Type of Collection: Renewal.

OMB No. 4040–0010.

Abstract: The Project/Performance Site Location(s), Project Abstract, and Key Contacts forms provide the Federal grant-making agencies an alternative to the Standard Form 424 data set and form. Agencies may use Project/Performance Site Location(s), Project Abstract, and Key Contacts forms for grant programs not required to collect all the data that is required on the SF–424 core data set and form.

Type of respondent: Project/Performance Site Location(s), Project Abstract, and Key Contacts forms are used by organizations to apply for Federal financial assistance in the form of grants. This form is submitted to the Federal grant-making agencies for evaluation and review.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Project/Performance Site Location(s)	Grant Applicants	127,281	1	1	127,281
Project Abstract	Grant Applicants	230	1	1	230
Key Contacts	Grant Applicants	4,566	1	1	4,566
Total		*132,077*	1	1	132,077

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–14151 Filed 6–30–22; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

DATES: The meeting will be held on Wednesday, July 20, 2022 from 9 a.m. until 4:30 p.m., and Thursday, July 21, 2022, from 9 a.m. until 4 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted on the SACHRP website when this information becomes available.

ADDRESSES: This meeting will be held in person in Rockville, Maryland, and via videocast. In-person space will be limited due to COVID–19 precautions. Members of the public may also attend the meeting via videocast. Instructions for attending via videocast and in-person will be posted one week prior to

the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 9:00 a.m., on Wednesday, July 20, 2022, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with a discussion of the impact of social media use by research subjects; this will be followed by a final review of draft recommendations on the ethical and regulatory considerations for the use of artificial intelligence in human subjects research, and commentary on the Request for Public Comments on DRAFT Supplemental Information to the NIH Policy for Data Management and Sharing: Protecting Privacy When Sharing Human Research Participant Data. The second day, Thursday, July 21st, will include consideration of the current HHS policy of engagement and the interpretation of HHS support in 45 CFR 46, the OHRP Draft Guidance on Use of a Single Institutional Review Board for Cooperative Research (anticipated to have been released by the time of this publication), and may continue discussion of topics from the first day's agenda. Other topics may be added; for the full and updated meeting agenda, see *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.* The meeting will adjourn by 4:00 p.m. July 21st, 2022.

The public may submit written public comment in advance. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov* by midnight July 15th, 2022, ET. Comments are limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by the SACHRP.

Dated: June 6, 2022.

Julia G. Gorey,

Executive Director, SACHRP, Office for Human Research Protections.

[FR Doc. 2022–14102 Filed 6–30–22; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Implementation Grant on Liver Transplantation.

Date: August 8, 2022.

Time: 9:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH–NIDDK, 6707 Democracy Blvd., Room 7017, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14131 Filed 6–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Aging: Immune Response, Juvenile Protection Factors, Neuromuscular Function, and Environmental Exposure Impact on Alzheimer's Disease.

Date: July 25, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis-Chronic Fatigue Syndrome.

Date: August 1, 2022.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14132 Filed 6–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: August 4, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: The purpose of this meeting is to update the Advisory Board and public stakeholders on the progress of sleep and circadian research activities across NIH, and the activities of professional societies.

Place: National Institutes of Health, Bethesda, MD (Virtual Meeting).

Telephone Access: 1–669–254–5252 (Meeting ID: 161 168 8607 Passcode: 930955) Virtual Access: *https://nih.zoomgov.com/j/1611688607?pwd=d0cxNHZ4RzRPSWF3SU52RUl2eS9CUT09* (Meeting ID: 161 168 8607 Passcode: 930955).

Contact Person: Marishka Brown, MS, Ph.D., Health Scientist Administrator, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10183, Bethesda 20814–7952, 301–435–0199, *marishka.brown@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 27, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14080 Filed 6–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Library of Medicine Board of Scientific Counselors.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Board of Scientific Counselors.

Date: October 13, 2022.

Open: October 13, 2022, 11:00 a.m. to 12:35 p.m.

Agenda: Program Discussion and Investigator Report.

Place: Virtual Meeting.

Closed: October 13, 2022, 12:35 p.m. to 1:20 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: October 13, 2022, 1:50 p.m. to 2:35 p.m.

Agenda: Investigator Report.

Closed: October 13, 2022, 2:35 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Contact Person: Valerie Florance, Ph.D., Acting Scientific Director, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894, 240–603–9822, *florancev@mail.nih.gov.*

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Open sessions of this meeting will be broadcast to the public, and available for viewing at *https://videocast.nih.gov* on October 13, 2022. Please direct any questions to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14130 Filed 6–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee. The meeting is devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine and will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 27–28, 2022.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: Virtual Meeting.

Contact Person: Dianne Babski, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 4S404, Bethesda, MD 20894, 301–827–4729, *babskid@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: June 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14129 Filed 6–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986,

(Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2022–14119 Filed 6–30–22; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0092]

Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection, Department of Homeland Security, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 13303) on March 09, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Carriers.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use,* is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by 19 U.S.C. 1309 and 1317 and is provided for by 19 CFR 10.59(e) and 10.65. CBP Form 5125 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=5125.*

Type of Information Collection: CBP Form 5125.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes (0.33 hours).

Estimated Total Annual Burden Hours: 165.

Dated: June 28, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–14158 Filed 6–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2022–0043]

Agency Information Collection Activities: DHS Hummingbird on ServiceNow Platform

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

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.

DATES: Comments are encouraged and will be accepted until August 30, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2022–0043, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2022–0043. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Headquarters (HQ) Hummingbird program is a U.S. Government program, initiated in July 2021 pursuant to the Presidential Memorandum on the Designation of the Department of Homeland Security as Lead Federal Department for Facilitating the Entry of Vulnerable Afghans into the United States and in support of Operation Allies Welcome (OAW). DHS, in coordination with the Department of State (DOS), is supporting screening, processing and resettlement efforts for individuals coming from Afghanistan who are neither U.S. citizens nor lawful permanent residents. This includes initial screening and vetting prior to entering the U.S., managing humanitarian parole, issuing special immigrant visas, processing at pre-designated U.S. military bases, applications for immigration status, work authorization, and essential coverage, and resettlement assistance. The legal authority for this program is provided under Section 402, of the Homeland Security Act of 2002, as revised (Pub. L. 107–296) (6 U.S.C. 202).

DHS remains committed to building a safe, orderly, and humane immigration system that upholds our laws and values. All information, including PII, entered by applicants and parolees into the Hummingbird system will be used by DHS employees and staff to determine an applicant's eligibility to apply for a SIV through OAW, and to assist with processing and resettlement of parolees.

Hummingbird allows DHS to track applicants through applicable stages of case processing at U.S. military bases, view case information and applicant biodata, update and track completion of various processing activities on base, and use the searching and filtering capabilities to produce reports. Therefore, DHS is establishing the Hummingbird System.

The purpose of this effort is to provide centralized and standardized tracking and reporting for OAW, including resettlement progress. Afghans who are eligible for SIVs are those that took significant risks to support U.S. military and civilian personnel in Afghanistan, employed by or on behalf of the U.S. government or coalition forces in Afghanistan, or are a family member of someone who did.

The information, including PII, collected and used by the Hummingbird application on the ServiceNow platform will be able to be shared, disseminated, and viewed by the following:

- DHS Partners:
  - United States Citizenship and Immigration Services (USCIS)
- Federal Partners:
  - Department of State (DOS)
  - Health and Human Services
- International Partners:
  - International Organization for Migration (IOM)

The NGOs accessing the system as Task Force Users are under DoS IRC's umbrella/management. There are a host of individuals with day jobs at different organizations who access to Hummingbird but their work at safe havens in Hummingbird is on behalf of IRC.Non-Government Organizations and Private Sector Organizations With RolemBased Access:

- International Organization for Migration (IOM)
- Church World Service (CWS)
- World Relief (WR)
- International Rescue Committee (IRC)
- HIAS (formerly Hebrew Immigrant Aid Society)
- United States Conference of Catholic Bishops (USCCB)
- Ethiopian Community Development Council (ECDC)
- Episcopal Migration Ministries (DFMS/EMM)
- U.S. Committee for Refugees and Immigrants (USCRI)
- Lutheran Immigration and Refugee Services (LIRS)
- Community Sponsorship Hub
- State Afghan Placement and Assistance (SAPA)

Hummingbird stores Special Immigrant Visa (SIV) applicant and parolee data and is used to track applicants through applicable stages of case processing at U.S. military bases. In Hummingbird, authorized users can view case information and applicant biodata, update and track completion of various processing activities on base, and use the searching and filtering capabilities to produce reports. Additionally, Hummingbird will allow DHS to provide centralized and standardized reporting for Operation Welcome Allies, including resettlement progress.

Hummingbird may collect the following types of information, including personally identifiable information (PII), medical information, travel information, and resettlement information on parolees. The data dictionary outlining all of these fields will be included with this ICR package.

Hummingbird is a cloud-based, externally facing, case management system supported by ServiceNow in the DHS HQ ServiceNow environment. The system can be accessed at the following URL through March 25, 2022: *https://seirmprod.servicenowservices.com/hb.* After March 25, 2022, the system will be accessible in the DHS HQ environment and can be reached at the following URL: *https://dhshqhb.servicenowservices.com.* System access is only given to users who have a legitimate need to complete required Hummingbird job tasks. Individuals in the public who are not affiliated with the Hummingbird program are not granted access.

Field workers at safe havens in the United States verbally gather biographical and contact information from the enrollee. All other information is entered by field workers as they complete tasks in Hummingbird or entered and updated via system interconnections.

This information collection does not have an impact on small businesses or other small entities.

Hummingbird supports the OAW program pursuant to the Presidential Memorandum on the Designation of the Department of Homeland Security as Lead Federal Department for Facilitating the Entry of Vulnerable Afghans into the United States. Barring the information collection made possible by Hummingbird, DHS would be non-compliant with the President's direction.

Should Hummingbird be inaccessible via a public facing website, processing enrollees who are eligible for benefits such as resettlement assistance, and medical assistance would move to a paper and excel based process the would be highly inefficient. This inefficiency would lead to very lengthy processing times with a higher risk of errors leaving parolees living at safe havens for extended periods of time. Additionally, if important data was lost in a manual process, enrollees could lose valuable benefits they need to survive.

Ultimately, without the ability manage critical elements of the Hummingbird program through the Hummingbird application, many Afghans who took significant risks to assist the U.S. military in its efforts in Afghanistan and may be in humanitarian crisis will be unable to obtain the ability to apply for a Special Immigrant Visa through OAW. Further, parolees will be unable to receive humanitarian, medical, employment, and resettlement assistance as they adjust to life in the U.S. Without Hummingbird, DHS will be unable to support its commitment to building a safe, orderly, and humane immigration system that upholds our laws and values.

DHS is currently in the process of completing all Privacy requirements. This response will be updated at a later time.

There is no question of a sensitive nature.

• Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

• If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83–I.

• Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

The estimated number of respondents for this collection instrument is approximately 105,000. 85,000 of these parolees/respondents have already moved through the resettlement process while the Hummingbird application was hosted in the DoS ServiceNow environment. Another approximately 20,000 respondents will be moving through the system after the migration to DHS HQ is complete. Field workers at safe havens in the United States verbally gather biographical and contact information once from the enrollee. All other information is entered by field workers as they complete tasks in Hummingbird or entered and updated via system interconnections. This intake information takes an estimated 30 minutes to gather.

The total burden for parolees who have already been processed while Hummingbird resided at the DoS: 42,500 hours.

The total burden for parolees who will be processed after Hummingbird is migrated to the DHS HQ environment: 10,000 hours.

Total Burden for the Hummingbird Program: 52,500.

Please note, this program will close once all Afghan refugees have been resettled. It is not intended to be a multi-year program.

This information was gathered from program experts.

HUMMINGBIRD—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Total number of responses	Total number of adult respondents *	Average burden per response in hours	Average hourly wage rate **	Total respondent cost
Parolee	Hummingbird Intake	105,000	1	105,000	63,000	0.5	$27.07	$852,705

* Total Respondent Cost was calculated for adults only. 60% of respondents are adults. 40% of respondents are children.
** The average hourly rate was pulled from the *BLS.gov* site using the All-Occupations category (00–0000).

May 2020 National Occupational Employment and Wage Estimates (*bls.gov*).

There is no annual cost burden associated with this collection.

There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

HUMMINGBIRD—ANNUAL COST TO THE FEDERAL GOVERNMENT—DHS HQ COSTS ONLY

Item	Cost ($)
Contract Costs:	.....
Infrastructure	$ 47,200
Labor Support	415,000
Federal Staff Salaries:	.....
Federal Staff (2 FTEs: Grade 14 + .3 FTE: Grade 15)	346,514
Facilities [cost for renting, overhead, etc. for data collection activity]	.....
Computer Hardware and Software [cost of equipment annual lifecycle]	.....
Equipment Maintenance [cost of annual maintenance/service agreements for equipment]	.....
Printing	.....
Postage	.....
Travel	.....
Total	808,714

This is a new information collection. There has been no change to the information collected under the emergency approval and there are no changes to the burden associated with the 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: DHS Hummingbird on ServiceNow Platform.

OMB Number: 1601–0033.

Frequency: Annually.

Affected Public: Public.

Number of Respondents: 105,000.

Estimated Time per Respondent: .5.

Total Burden Hours: 52,500.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2022–14058 Filed 6–30–22; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6333–N–01]

Notice of HUD-Held Vacant Loan Sales (HVLS 2022–2, Parts 1 and 2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of sales of reverse mortgage loans.

SUMMARY: This notice reports HUD's recent June 8th competitive sale offering of 1,406 reverse mortgage loans secured by vacant or abandoned properties with a loan balance of approximately $336 million (June sale or HVLS 2022–2, Part 1). The June sale consisted of one national pool and one single-asset pool secured by a vacant lot in Omaha, Nebraska (Single asset pool or Land only asset). The Secretary offered these assets to qualified nonprofit or unit of state or local government bidders and joint ventures with a charitable 501(c)(3) nonprofit organization or unit of government carrying out a governmental public purpose. This was the eighth sale offering of its type. For the June sale, approximately 700 of these mortgage loans were awarded on or about June 13, 2022. The approximately 700 remaining mortgage loans, including the Land only asset, will be offered again on or about July 27th in one national pool (July sale or HVLS 2022–2, Part 2). Terms and conditions of that July sale are outlined later in this document. Also, this notice generally describes the bidding process for the sale and certain persons who are ineligible to bid.

DATES: For the July sale, the Bidder's Information Package (BIP) will be made available to eligible bidders at least fourteen to twenty-one days prior to the sale. Bids for the July sale will be accepted on the Bid Date of on or about July 27, 2022 (Bid Date). HUD anticipates that awards will be made on or about July 28, 2022 (Award Date).

ADDRESSES: HUD has expanded the eligible bidder types for the July sale to include for-profit entities. To become an eligible bidder and receive the BIP for the July sale, prospective bidders must complete, execute, and submit a Confidentiality Agreement and Qualification Statement acceptable to HUD. The documents will be available in preview form on the Transaction Specialist (TS), Falcon Capital Advisors, website: *http://www.falconassetsales.com.* This website contains information and links for sale registration and electronically completing and submitting the documents.

If you do not submit electronically, please submit executed documents via mail or facsimile to Falcon Capital Advisors: Falcon Capital Advisors, 427 N Lee Street, Alexandria, VA 22314, Attention: Glenn Ervin, HUD HVLS Loan Sale Coordinator. eFax: 1–202–393–4125.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000;

telephone 202–708–2625, extension 3927 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This notice announces HUD's sale of due and payable Secretary-held reverse mortgage loans in HVLS 2022–2, Part 1 that took place on June 8th. In that June sale, HUD offered 1,404 reverse mortgage loans but awarded approximately 700 reverse mortgage loans.

Additionally, this notice announces HUD's upcoming HVLS 2022–2, Part 2 sale of the approximately 700 remaining reverse mortgage loans that were not awarded in the June sale. The reverse mortgage loans offered for the July sale have a loan balance of approximately $141 million. The reverse mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. The Land only asset is secured by a vacant lot in Omaha, Nebraska.

For the July sale, a listing of the approximately 700 reverse mortgage loans will be included in the due diligence materials made available to eligible bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer eligible bidders an opportunity to bid competitively on the reverse mortgage loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in the July sale. The BIP or a BIP Supplement, as applicable, will include a standardized non-negotiable Conveyance, Assignment and Assumption Agreement, and any attached riders, for the July sale (CAA). The CAA will contain mission outcome requirements.

Eligible bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each eligible bidder's aggregate bid price.

HUD evaluates the bids submitted and determines the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If an eligible bidder is successful, the eligible bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders.

This notice provides some of the basic terms of sale. The CAA, which will be released in a BIP or BIP Supplement, as applicable, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA are not subject to negotiation.

Due Diligence Review

The BIP describes how eligible bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from a sale at any time prior to the Award Date and the settlement date for the mortgage loans. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer no later than 60 days after the Award Date.

The reverse mortgage loans offered for sale were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the reverse mortgage loans for this specific sale transaction. For the July sale, HUD has determined that this method of sale optimizes HUD's return on the sale of these reverse mortgage loans, affords the greatest opportunity for all eligible bidders to bid on the reverse mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the due and payable reverse mortgage loans.

Bidder Ineligibility

To bid in the July sale as an eligible bidder, a prospective bidder completes, executes, and submits both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including but not limited to (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans offered if the prospective bidder, its Related Entities, or repurchase lenders, are any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred, or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state, or local government agency, division, or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a CAA Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor, and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of

this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 9 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) Is any principal of any entity or individual described in the preceding sentence;

(c) Any employee or subcontractor of such entity or individual during that six-month period; or

(d) Any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2022–2, Parts 1 and 2, including, but not limited to, the identity of any successful eligible bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the reverse mortgage loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2022–2, Parts 1 and 2, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2022–2, Parts 1 and 2 and does not establish HUD's policy for the sale of other reverse mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2022–14147 Filed 6–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22DJ73UG5100; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Water Resources Management—Institutional Resiliency and Data Delivery Needs

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, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 1, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments may also be sent by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Nicole Herman-Mercer, by email at *nhmercer@usgs.gov,* or by telephone at 303–236–5031. 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 PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 2, 2021, (FR 68510). No comments were received

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The United States is facing growing challenges related to the availability of water due to shifting demographics, aging water-delivery infrastructure, and the impacts of climate change, which include flood and drought. Working with incomplete knowledge, managers must consider the needs of various demographic groups and economic sectors when making management decisions as well as when responding to emergencies. We will collect information regarding the decision-making process, data, and data format needs to support daily, short-term, and long-term decision-making. Information will also be sought on the resiliency of water-resource management institutions. A lack of resiliency within water institutions can lead to poor decision-making and outcomes that produce conflict between water-use sectors, states, or communities and ultimately may led to crises. This information will support the delivery of appropriate data, in appropriate formats, at the right time for decision-making and support recommendation on how water-resource institutions can be more resilient in the face of the many water-resources challenges the nation currently faces. This information collection will include two separate surveys—one with a focus on data delivery needs and one with a focus on institutional resilience and two separate sets of interviews—one with a focus on data delivery needs and one with a focus on institutional resiliency.

Title of Collection: Water Resources Management—Institutional Resiliency and Data Delivery Needs.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Federal, State, local and Tribal governments and members of the public that engage in use of water data as part of their job (*i.e.* academics or non-governmental organizations].

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: 75 minutes.

Total Estimated Number of Annual Burden Hours: 188 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Twice per year.

Total Estimated Annual Nonhour Burden Cost: none.

An agency may not conduct, 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.*).

Joseph Nielsen,

Director, Integrated Information Dissemination Division, Water Resources Mission Area USGS.

[FR Doc. 2022–14114 Filed 6–30–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–NEW]

Agency Information Collection Activities; Indian Affairs Public Health Needs Assessment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 30, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference Office of Management and Budget (OMB) Control Number 1076–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Tyler White, Lieutenant Commander, U.S. Public Health Service, Office of Facilities, Property and Safety Management by email at *Tyler.white@bia.gov* or by via telephone at 505–563–5212. 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.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether 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 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 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.

Abstract: Enhancing the public health and safety capacity throughout Indian Affairs is a force multiplier in achieving the goals of our agency and in meeting the Occupational Safety and Health Act of 1970, Section 5 directive to create a place of employment free from recognized hazards. The purpose of this survey is to identify and prioritize public health issues and needs and enhance the public health and safety capacity throughout Indian country. The Office of Facilities, Property and Safety

Management (OFPSM) Public Health and Safety (PHS) Team will use survey results to develop and coordinate action plans.

Title of Collection: Indian Affairs Public Health Needs Assessment.

OMB Control Number: 1076–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Tribal governments, bureau-operated and tribally-controlled schools and justice programs.

Total Estimated Number of Annual Respondents: 1,000.

Total Estimated Number of Annual Responses: 1,000.

Estimated Completion Time per Response: 10 minutes.

Total Estimated Number of Annual Burden Hours: 167.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–14081 Filed 6–30–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO–930–L1440000–ET0000; COC–63081–01]

Notice of Proposed Withdrawal and Public Meeting, Upper Colorado River Special Recreation Management Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal and public meeting.

SUMMARY: The Secretary of the Interior proposes to withdraw 12,437 acres of public lands and 939.56 acres of reserved Federal mineral interest from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral or geothermal leasing laws, for a period of 20 years to protect scenic and recreation values in the Upper Colorado River Special Recreation Management Area. Publication of this proposal segregates the land for 2 years from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral or geothermal leasing laws and initiates a 90-day public comment period.

DATES: Comments must be received by September 29, 2022.

A virtual public meeting is scheduled for August 17, 2022, at 6 p.m. and can be attended using the following link: *https://blm.zoomgov.com/j/1611421807?pwd=UVhRd3JZTkhOaXU3WXRvMnViSjIyUT09.*

ADDRESSES: Comments and meeting requests should be sent to State Director, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093. The BLM is preparing an environmental assessment under the National Environmental Policy Act to evaluate the proposed withdrawal and anticipates reaching a finding of no significant impact. Information regarding the proposed withdrawal, including environmental and other reviews will be available at the Colorado State Office.

FOR FURTHER INFORMATION CONTACT: Jennifer Jardine, Senior Realty Specialist, BLM Colorado State Office, telephone: (970) 385–1224; email: *jjardine@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 for contacting Ms. Jardine. 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 applicant is the Bureau of Land Management (BLM) at the address listed previously. The petition/application requests the Secretary of the Interior to withdraw, for a period of 20 years, subject to valid existing rights, the following described public lands from location or entry under the United States mining laws but not from leasing under the mineral or geothermal leasing laws: Colorado River Special Recreation Management Area:

Sixth Principal Meridian, Colorado

T. 1 N., R. 79 W.,
- sec. 8, Parcels A, B, C, and D;
- sec. 17, Parcels A and B, NE¼NW¼, S½NW¼, and N½SW¼;
- sec. 18, lot 3.

T. 1 N., R. 80 W.,
- sec. 13, lots 1 to 4;
- sec. 14, SW¼SE¼ and that portion of the S½SW¼ lying southerly from the northern right-of-way fence of Grand County Road No. 33, described in the Warranty Deed Document No. 99004513, filed April 23, 1999, and depicted on the survey plat No. LS400, filed on July 13, 1995, in the official records of Grand County, Colorado;
- sec. 15, lots 9 and 11, S½SW¼, S½SE¼, and a metes and bounds parcel located in the N½SW¼ described in the Warranty Deed Document No. 99004513, filed April 23, 1999, and depicted on the survey plat No. LS398, filed on July 13, 1995, in the official records of Grand County, Colorado;
- sec. 16, a metes and bounds parcel located in the S½SW¼ and S½SE¼, described in the Warranty Deed Document No. 99004513, filed April 23, 1999, in the deed filed under Reception Number 89020, February 5, 1959, in the deed filed under Reception Number 88584, November 12, 1958, and depicted on the survey plats No. 398 and No. LS399, filed on July 13, 1995, in the official records of Grand County, Colorado;
- sec. 19, NE¼SE¼, and a metes and bounds parcel located in the N½NE¼ described in the Warranty Deed Document No. 99004513, filed April 23, 1999, in the official records of Grand County, Colorado;
- sec. 20, lots 2 and 3, S½NE¼, S½NW¼, and NE¼SW¼;
- sec. 21, N½NE¼, S½NW¼, and that portion of the N½NW¼ lying northerly from the centerline of Grand County Road 33 described in the Warranty Deed Document No. 99004513, filed April 23, 1999, in the deed filed under Reception Number 89020, February 5, 1959, and depicted on the survey plat No. LS399, filed on July 13, 1995, in the official records of Grand County, Colorado;
- sec. 22, lots 1 thru 4.

T. 1 N., R. 81 W.,
- sec. 13, SW¼SW¼;
- sec. 23, SE¼NW¼, NE¼SW¼, and NE¼SE¼;
- sec. 24, S½NE¼, S½NW¼, and N½SE¼;
- sec. 27, lots 1 thru 15;
- sec. 28, SE¼ and SE¼SW¼;
- sec. 32, E½ and SW¼;
- sec. 33, N½NE¼, SW¼NE¼, and W½.

T. 1 S., R. 81 W.,
- sec. 5, lots 8 and 9;
- sec. 6, lots 6, 7, and lots 9 thru 18;
- sec. 7, lots 5 thru 19;
- sec. 18, lots 1 and 2, and E½NW¼.

T. 1 S., R. 82 W.,
- sec. 12, lots 1 thru 5, SW¼NE¼, E½SW¼, SW¼SW¼, and W½SE¼;
- sec. 13, lots 1 thru 9, W½SW¼ and that portion of Tract 53 lying westerly of the medial line, an ambulatory line, of the Colorado River;
- sec. 14, E½SE¼, SE¼SW¼, and N½SE¼, SW¼SE¼;
- sec. 22, SE¼;
- sec. 23, NE¼, E½NW¼, SW¼, and N½SE¼;
- sec. 24, lots 1, 2, and 3, NW¼NW¼, and S½NW¼;
- sec. 27, SW¼NW¼, a metes and bounds parcel located in the W½NE¼ and E½NW¼ described in the Warranty

Deed with Reception No. 258382, filed June 26, 1987, in the official records of Grand County, Colorado, and a metes and bounds parcel located in the N½NW¼ described in the Warranty Deed with Reception Number 374902, filed September 29, 1986, in the official records of Grand County;
sec. 28, lots 4 thru 6, NE¼NE¼, S½NE¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
sec. 32, those portions of unpatented Mineral Survey No. 13963 lying within the E½ of sec. 32, and that portion of Tract 82 within the E½ of sec. 32;
sec. 33, lots 1, 3, 4, 5, and 6, lots 8 thru 11, NE¼, E½NW¼, SW¼NW¼, and that portion of the Bona Dea Placer located in sec. 33;
sec. 34, lot 1 and NW¼NW¼.

T. 2 S., R. 82 W.,
sec. 4, lots 12, 14, 15, 17, 18, and 19, lots 26 thru 30, S½NW¼, NW¼SW¼, and that portion of the Bona Dea Placer located in sec. 4;
sec. 5, lots 5, 6, and 11, lots 14 thru 22, lots 25 and 26, S½NE¼, and N½SE¼ and that portion of the Bona Dea Placer located in sec. 5;
sec. 6, lots 20, 30, 31, 32, 37, and 38, S½NE¼, E½SW¼, SE¼NW¼, and SE¼;
sec. 7, lots 5, thru 7, lots 11 thru 21, NE¼NE¼, SE¼SW¼, and SW¼SE¼;
sec. 18, lots 5 thru 12, and lots 14 thru 17.

T. 2 S., R. 83 W.,
sec. 12, lot 4;
sec. 13, lots 1 thru 4, W½NE¼, E½SW¼, and W½SE¼;
sec. 23, E½NE¼, S½SW¼, SW¼SE¼, NE¼SE¼, N½SE¼SE¼, and N½SW¼SE¼SE¼, N½SE¼SE¼SE¼;
sec. 24, lot 1, E½NE¼, W½, and W½SE¼;
sec. 25, NW¼;
sec. 26, NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and NW¼.

The areas described aggregate approximately 12,437 acres in Grand and Eagle Counties.

The petition/application requests the Secretary of the Interior to withdraw, for a period of 20 years, subject to valid existing rights, the following described reserved minerals from location or entry under the United States mining laws but not from leasing under the mineral or geothermal leasing laws:

Sixth Principal Meridian, Colorado

T. 1 N., R. 80 W.,
sec. 20, NW¼NW¼.

T. 1 N., R. 81 W.,
sec. 28, N½SW¼ and SW¼SW¼;
sec. 29, SE¼SE¼.

T. 1 S., R. 82 W.,
sec. 14, SW¼SW¼;
sec. 22, N½NE¼, SW¼NE¼, and SW¼;
sec. 23, NW¼NW¼;
sec. 26, lot 1 and SW¼NW¼;
sec. 27, lots 1 and 2, and N½SE¼;
sec. 33, that portion of Tract 70 lying within the NW¼NW¼.

T. 2 S., R. 82 W.,
sec. 4, lot 22;
sec. 7, that portion of Tract 41 lying in sec. 7.

The areas described aggregate approximately 939.56 acres in Grand and Eagle Counties.

The BLM petition/application has been approved by the Secretary of the Interior, and therefore it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The use of a rights-of-way, interagency agreement or cooperative agreement, or surface management under 43 CFR subpart 3809 regulations would not adequately constrain non-discretionary uses and would not provide adequate protection of cultural, recreational, and biological resources, nor the financial investments in public campgrounds and other improvements on these lands.

There are no suitable alternative sites, as the described land contains the resource values that need protection.

Water rights will not be needed to fulfill the purpose of the proposed withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Colorado State Director at the address listed earlier (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the BLM Colorado State Office during regular business hours, 7:45 a.m. to 4:15 p.m. Monday through Friday, except Federal holidays. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

For a period until July 1, 2024, subject to valid existing rights, the lands and mineral interests in this notice will be segregated from location and entry under the United States mining laws, unless the application is denied or canceled, or the withdrawal is approved prior to that date.

This withdrawal application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that will not significantly impact the values to be protected by this withdrawal may be allowed with the approval of the authorized officer of the BLM during the segregative period.

(Authority: 43 CFR 2310.3–1(a).)

Brian Achziger,

Acting BLM Colorado State Director.

[FR Doc. 2022–14103 Filed 6–30–22; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000–L14400000–ET0000; CACA–59497 et al. MO#4500160635]

Public Land Order No. 7911 Withdrawal Extension of 10 Secretary's Orders, 2 Public Land Orders and 1 Bureau of Land Management Order, as Modified by Public Land Order No. 7262, and Correction, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order extends the duration of the withdrawals created by 10 Secretary's Orders (SOs), 2 Public Land Orders (PLOs), and 1 Bureau of Land Management (BLM) Order, as modified by PLO No. 7262, affecting 145,644.03 acres of Federal lands from location and entry under the United States mining laws, but not from the general land laws or mineral leasing laws, for a 20-year period. The withdrawal extension is necessary to continue protection of the following Bureau of Reclamation Projects: Boulder Canyon, Colorado River Storage, Senator Wash Pump Storage, and Yuma Reclamation, which by the terms of the modification made by PLO 7262 would otherwise expire on July 6, 2022. Additionally, this Order corrects an error in labeling a project area as the All-American Canal Project, which appeared in a **Federal Register** notice on March 11, 2022.

DATES: This PLO takes effect on July 7, 2022.

FOR FURTHER INFORMATION CONTACT: Heather Daniels, BLM California State Office, telephone: (916) 978–4674, email: *hdaniels@blm.gov;* or Luis Rodriguez, USBR Yuma Area Office, telephone: (928) 343–8275, email: *lrodriguez@usbr.gov,* during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individuals in the United

States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) 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: PLO 7262 modified the following 10 SOs, 2 PLOs, and 1 BLM Order (BLMO):

(a) SO dated October 24, 1944 (CACA–7074);

(b) SO dated October 16, 1931 (CACA–7101);

(c) SO dated February 19, 1929 (CACA–7103);

(d) SO dated January 31, 1903 (CACA–7231);

(e) SO dated April 2, 1909 (CACA–7232);

(f) SO dated February 28, 1918 (CACA–7234);

(g) SO dated March 15, 1919 (CACA–7235);

(h) SO dated October 19, 1920 (CACA–7236);

(i) SO dated July 26, 1929 (CACA–7238);

(j) SO dated June 4, 1930 (CACA–7239);

(k) PLO No. 3262 dated October 29, 1963 (CARI–01051);

(l) PLO No. 4690 dated September 15, 1969 (CARI–07752); and

(m) BLMO dated July 23, 1947 (CACA–7073).

Correction

In the **Federal Register** of March 11, 2022, FR Doc # 2022–05117, starting on page 14032, lands described in the third column, on lines 18 thru 33, labeled as *All-American Canal Project* were incorrectly labeled. This publication corrects those legally described lands by incorporating them as part of the Colorado River Storage Project as described and listed below. The corrected acreage for the Colorado River Storage Project is 15,185.50 acres.

The areas aggregate acreage described for this action is 145,644.03 acres and remains unchanged.

Order

The purpose for which the withdrawals were first made requires this extension. By virtue of the authority vested in the Secretary of the Interior by Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

The following 10 Secretary's Orders (SOs), 2 Public Land Orders (PLOs), and 1 BLM Order (BLMO), as modified by PLO No. 7262, effective July 7, 1997 (62 FR 30613), as corrected on July 16, 2003 (68 FR 42128), are hereby extended for a 20-year term pursuant to Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), subject to valid existing rights.

The land description for this Order is as follows:

San Bernardino Meridian, California

Boulder Canyon Project

PLO No. 4690 of September 15, 1969 (l) (CARI–07752)

T. 7 S., R. 7 E.,
Sec. 10, NE¼NE¼, NE¼NW¼NE¼, E½SE¼NE¼, and E½NE¼SE¼.
The areas described for PLO No. 4690 of September 15, 1969, contain 90.00 acres.
The total areas described for the Boulder Canyon Project contain 90.00 acres in Riverside County, California.

Colorado River Storage Project

SO of February 19, 1929 (c) (CACA–7103)

T. 5 S., R. 23 E.,
Sec. 14, E½;
Sec. 27, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 28, lots 1 thru 4, W½NE¼, W½SE¼, and W½;
Sec. 33, lots 1 thru 5;
Sec. 34, NW¼NW¼.
The areas described for Secretary's Order of February 19, 1929, aggregate 1,804.09 acres.

BLMO of July 23, 1947 (m) (CACA–7073)

T. 7 S., R. 10 E.,
Sec. 34, E½SW¼.
The areas described for Bureau of Land Management Order of July 23, 1947, contain 80.00 acres.

SO of October 24, 1944 (a) (CACA–7074)

T. 8 N., R. 22 E.,
Sec. 18, lots 1 thru 4, E½NW¼, E½SW¼, and E½.
The areas described for Secretary's Order of October 24, 1944, contain 627.22 acres.

SO of October 16, 1931 (b) (CACA–7101)

T. 10 N., R. 22 E.,
Sec. 7, lots 1 thru 4, E1½NW¼, E½SW¼, and E½.
T. 3 S., R. 23 E.,
Sec.. 15 and 22.
T. 9 N., R. 23 E.,
Sec. 30, lot 2.
The areas described for Secretary's Order of October 16, 1931, aggregate 1,945.98 acres.

SO of July 26, 1929 (i) (CACA–7238)

T. 15 S., R. 23 E.,
Sec. 21, all;
Sec. 22, S½.
The areas described for Secretary's Order of July 26, 1929, contain 960.00 acres.

SO of June 4, 1930 (j) (CACA–7239)

T. 1 S., R. 24 E.,
Sec. 32, lots 12, 14, 15, 18, and W½NW¼.
T. 7 S., R. 10 E.,
Sec. 32, S½NE¼, S½NW¼, and S½;
Sec. 34, W½SW¼.
T. 11 S., R. 15 E.,
Sec. 6, lot 3;
Sec. 8, N½NE¼, SE¼NE¼;
Sec. 18, SE¼SE¼;
Sec. 20, SW¼NW¼;
Sec.. 22 and 26;
Sec. 28, SW¼NW¼.
T. 12 S., R. 16. E.,
Sec. 6, lot 9 and lots 14 thru 18;
Sec. 18, E½;
Sec. 20, all;
Sec. 21, NW¼SW¼ and S½SW¼;
Sec. 27, S½SW¼ and NW¼SW¼;
Sec. 28, S½, S½NE¼, NW¼NE¼, and NW¼;
Sec. 29, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 30, lot 7, lots 11 thru 14, and E½SW¼;
Sec. 31, lots 3 thru 6, and E½NW¼;
Sec. 34, E½, N½NW¼, SE¼NW¼;
Sec. 35, SW¼.
T. 13 S., R. 17 E.,
Sec. 5, SW¼SW¼;
Sec. 6, lots 14 thru 16, lots 21 thru 25, lots 27 thru 29, N½SE¼, and SE¼SE¼;
Sec. 7, NE¼NE¼;
Sec. 8, SE¼SW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NW¼, E½SW¼, NW¼SE¼, and S½SE¼;
Sec. 17, N½NE¼ and SE¼NE¼;
Sec. 21, NE¼, NE¼NW¼, E½SE¼, and NW¼SE¼;
Sec. 22, S½SW¼ and NW¼SW¼;
Sec. 26, SW¼SW¼;
Sec. 27, W½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 34, E½NE¼;
Sec. 35, W½NW¼, SE¼NW¼, N½SW¼, SE¼SW¼, and SE¼.
T. 14 S., R. 18 E.,
Sec. 7, lots 2 thru 4 and SE¼SW¼;
Sec. 17, SW¼SW¼;
Sec. 18, lot 1, NE¼SW¼, SW¼NE¼, and E½NW¼;
Sec. 19, E½NE¼;
Sec. 20, SE¼SW¼, N½SW¼, W½SE¼, S½NW¼, and NW¼NW¼;
Sec. 28, SW¼ and SW¼NW¼;
Sec. 29, NE¼SE¼ and NE¼;
Sec. 33, SE¼SE¼, N½SE¼, NW¼NE¼, S½NE¼, E½NW¼, and NW¼NW¼;
Sec. 34, W½SW¼.
The areas described for Secretary's Order of June 4, 1930, aggregate 9,768.21 acres.
The total areas described for the Colorado River Storage Project aggregate 15,185.50 acres.

Senator Wash Pump Storage Project

PLO No. 3262 of October 29, 1963 (k) (CARI–01051)

T. 14 S., R. 23 E.,
Sec. 36, SE¼SE¼SE¼.
T. 14 ½ S., R. 23 E.,
Sec. 36, N½NE¼NE¼ and NE¼NW¼NE¼.
The areas described for Public Land Order 3262 of October 29, 1963, contain 40.00 acres.
The total areas described for the Senator Wash Pump Storage Project contain 40.00 acres in Imperial County, California.

Yuma Reclamation Project

SO of January 31, 1903, as Modified by SOs of April 9, 1909, and April 5, 1910 (d) (CACA–7231)

T. 13 S., R. 16 E.,
Sec. 1, lots 2, 3, 6, 7, lots 9 thru 11, lots 14 thru 18, and lots 23 thru 25;
Sec. 5, lots 15 and 25;
Sec. 9, W½NW¼ and SE¼SW¼;
Sec. 21, SE¼SE¼;
Sec. 34, SE¼NE¼;
Sec. 35, SW¼SW¼.
T. 14 S., R. 16 E.,
Sec. 2, lot 4 and SE¼SW¼;
Sec. 11, lot 3;
Sec. 23, E½SW¼;
Sec. 26, E½NW¼ and E½SW¼;
Sec. 35, E½NW¼ and E½SW¼.
T. 15 S., R. 16 E.,
Sec. 2, lot 3, SE¼NW¼, and E½SW¼;
Sec. 11, lot 6 and NE¼NW¼;
Sec. 23, SE¼SE¼;
Sec. 25, W½NW¼ and W½SW¼SW¼;
Sec. 26, E½NE¼.
T. 16 S., R. 16 E.,
Sec. 1, lot 11;
Sec. 12, E½NW¼ and SW¼SE¼;
Sec. 13, lots 1 and 14, and SW¼SE¼;
Sec. 24, W½W½NE¼;
Sec. 25, NE¼NW¼.
T. 17 S., R. 16 E.,
Sec. 1, SE¼;
Sec. 10, NW¼SE¼;
Sec. 11, lot 17;
Sec. 12, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 13, lot 1;
Sec. 14, lot 1.
T. 14 S., R. 17E.,
Sec. 1, SW¼, S½NW¼, and SW¼SE¼;
Sec. 2, lots 3 and 4, S½NE¼, and NE¼SE41/4;
Sec. 12, E½NW¼, NE¼, N½SE¼, and SE¼SE¼.
T. 16 S., R. 17 E.,
Sec. 31, S½SE¼ and SE¼SW¼;
Sec. 32, S½SE¼, S½SW¼, and S½N½SW¼.
T. 16 S., R. 18 E.,
Sec. 31, lots 5 and 6, NE¼SW¼, N½SE¼, and S½NW¼;
Sec. 32, S½NE¼, S½NW¼, N½N½SW¼, and N½SE¼;
Sec. 33, SW¼ and S½SE¼;
Sec. 34, S½SE¼ and S½SW¼;
Sec. 35, S½SE¼ and S½SW¼.
T. 17 S., R. 17 E.,
Sec. 1 thru 5;
Sec. 6, lots 5 and 6, E½SW¼ and E½;
Sec. 7, lots 3 thru 9, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 9, lots 1 thru 4 and N½;
Sec. 10, lots 1 thru 4 and N½;
Sec. 11, lots 1 thru 4 and N½;
Sec. 12, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 15 S., R. 18 E.,
Sec. 3, lots 5 and 6, SE¼, SW¼NE¼, NE¼SW¼, and S½NW¼;
Sec. 4, lot 3;
Sec. 10, N½NE¼ and SE¼NE¼;
Sec. 11, SW¼SE¼, SW¼, NW¼NW¼, and S½NW¼;
Sec. 13, W½SW¼ and SE¼SW¼;
Sec. 14, N½SE¼, SE¼SE¼, NE¼, and NE¼NW¼;
Sec. 24, SE¼SE¼, N½SE¼, S½NE¼, NW¼NE¼, N½NW¼, and SE¼NW¼.
T. 17 S., R. 18 E.,
Sec. 1, lots 3 thru 5, N½, N½NE¼, N½NW¼, and SW¼SW¼;
Sec. 2 thru 5;
Sec. 6, lots 3 thru 6, E½, E½NW¼, and E½SW¼;
Sec. 7, lots 3 thru 7, N½NE¼, and NE¼NW¼;
Sec. 8, lots 1 thru 4, N½NE¼, and N½NW¼;
Sec. 9, lots 1 thru 4;
Sec. 10, lots 1 thru 4;
Sec. 11, lots 1 thru 4;
Sec. 12, lots 1 and 2.
T. 16 S., R. 19 E.,
Sec. 2, SW¼SW¼;
Sec. 3, lots 3 and 4, SW¼NE¼, S½NW¼, and S½;
Sec. 4, lots 1 thru 4, S½NE¼, S½NW¼, and S½;
Sec. 5, lots 3 thru 5, and SE¼NE¼;
Sec. 10, NE¼NE¼;
Sec. 11, all;
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 14, E½NE¼ and NE¼NW¼NE¼;
Sec. 24, E½ and E½NW¼;
Sec. 25, NE¼NE¼ and S½;
Sec. 26, SE¼;
Sec. 31, lot 6, SE¼SW¼, and E½;
Sec. 32, all;
Sec. 33, S½SE¼ and S½SW¼;
Sec. 34, S½SE¼ and S½SW¼;
Sec. 35, S½SW¼ and E½.
T. 17 S., R. 19 E.,
Sec. 1, lots 1 thru 4, N½NE¼, N½NW¼, and S½NW¼;
Sec. 2, lots 1 thru 4, and N½;
Sec. 3, lots 1 thru 4, and N½;
Sec. 4, lots 1 thru 4, and N½;
Sec. 5, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 6, lots 1 thru 7, NE¼, E½NW¼, NE¼SW¼, N½SE¼.

The areas described for Secretary's Order of January 31, 1903, as modified by Secretary's Orders of April 9, 1909, and April 5, 1910, aggregate 25,784.45 acres.

SO of April 2, 1909, as Modified by SOs of April 5, 1910, and February 11, 1920 (e) (CACA–7232)

T. 9 S., R. 12 E.,
Sec. 30, portions of lots 1 and 2 of NW¼ south and west of State Highway 111, lots 1 and 2 of SW¼, portions of N½SE¼ south and west of State Highway 111, and S½SE¼;
Sec. 32 and 34;
T. 10 S., R. 12 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 8, 10, and 12.
T. 10 S., R. 15 E.,
Sec. 30, lot 6.
T. 12 S., R. 15 E.,
Sec. 2, SW¼SW¼.

The areas described for Secretary's Order of April 2, 1909, as modified by Secretary's Orders of April 5, 1910, and February 11, 1920, aggregate 5,540.76 acres.

SO of February 28, 1918 (f) (CACA–7234)

T. 15 S., R. 19 E.,
Sec. 19, lots 3 and 4, SE¼SW¼, and SW¼SE¼;
Sec. 29, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 30, NE¼SE¼, NE¼, and NE¼NW¼;
Sec. 32, NE¼NW¼ and NE¼;
Sec. 33, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, NW¼SE¼, and S½SE¼.

The areas described for Secretary's Order of February 28, 1918, contain 1,198.92 acres.

SO of March 15, 1919 (g) (CACA–7235)

T. 16 S., R. 20 E.,
Sec. 19, SW¼SW¼;
Sec. 21, SE¼, unsurveyed;
Sec. 22, SW¼, unsurveyed;
Sec. 26, NW¼NW¼, unsurveyed;
Sec. 27, N½, unsurveyed;
Sec. 28 and 29;
Sec. 30, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 31, 32, 33, and 36;
Sec. 44, 45, 49, 50, 51, 52, and 54 unsurveyed;
Sec. 55, NE¼ and N½NW¼, unsurveyed;
Sec. 60, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 17 S., R. 20 E.,
Sec. 5, lots 1 thru 4, N½NW¼;
Sec. 6, lots 1 thru 4, N½NE¼, and N½NW¼.
T. 16. S., R. 21 E.,
Sec. 27, lots 1 thru 14, SE¼NW¼, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 31, lots 1 thru 7, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 3 thru 9, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 33, lots 5 thru 20;
Sec. 34, lots 5 thru 14, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

The areas described for Secretary's Order of March 15, 1919, contains 12,439.00 acres.

SO of October 19, 1920 (h) (CACA–7236)

T. 5 S., R. 7 E.,
Sec. 2, N½SW¼, SE¼SW¼, and SE¼;
Sec. 12, NW¼SE¼.
T. 6 S., R. 7 E.,
Sec. 20, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 28, W½NW¼, W½SW¼, and SE¼SW¼.
T. 5 S., R. 8 E.,
Sec. 18, E½SE¼.
T. 6 S., R. 8 E.,
Sec. 2, E½NW¼SE¼ and E½SE¼;
Sec. 12, W½.
T. 7 S., R. 8 E.,
Sec. 32, NE¼NE¼, E½NW¼NE¼, N½SE¼NE¼, and SE¼SE¼NE¼.
T. 6 S., R. 9 E.,
Sec. 18, lots 2 thru 4;
Sec. 20, S½NW¼ and SW¼;
Sec. 28, SW¼SW¼;
Sec. 34, SW¼SW¼.
T. 7 S., R. 9 E.,
Sec. 28, SE¼;
Sec. 32, S½NE¼ and SE¼.
T. 8 S., R. 9 E.,

Sec. 16 and 36.
T. 9 S., R. 9 E.,
Sec. 10, NE¼.
T. 8 S., R. 10 E.,
Sec. 2, portions of unnumbered lots of NW¼ south and west of State Highway 111, portions of SW¼ south and west of State Highway 111, and portions of SE¼ south and west of State Highway 111;
Sec. 4, all;
Sec. 6, lots 1 and 2 of SW¼, SE¼, and N½;
Sec.. 8 and 10;
Sec. 12, portions of W½NW¼ south and west of State Highway 111, portions of W½SW¼ south and west of State Highway 111, and portions of NE¼SW¼ south and west of State Highway 111;
Sec. 14, W½NE¼, SE¼NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 16, E½, W½NW¼, SE¼NW¼, and SW¼;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec.. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 32, lots 1 and 2 of SE¼, N½, SW¼, and N½SE¼;
Sec. 34, lots 1 thru 4, N½, N½SE¼, and N½SW¼;
Sec. 36, lots 1 thru 4, N½, N½SE¼, and N½SW¼.
T. 9 S., R. 10 E.,
Sec.. 1 thru 5, unsurveyed;
Sec. 6, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½, partly unsurveyed;
Sec. 8, all, partly unsurveyed;
Sec.. 9 thru 13, unsurveyed;
Sec. 14, all, partly unsurveyed;
Sec. 15, N½, partly unsurveyed;
Sec. 16, all;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 20 and 22;
Sec. 24, all, partly unsurveyed;
Sec. 26 and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 32, 34, and 36.
T. 10 S., R. 10 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec.. 10, 12, 14, and 24.
T. 8 S., R. 11 E.,
Sec. 2, N½, NE¼SW¼, S½SW¼, and SE¼;
Sec. 6, lots 1 and 2 of SW¼, N½, and SE¼;
Sec. 18, portions of lot 2 south and west of State Highway 111;
Sec. 20, portions of W½SW¼ south and west of State Highway 111 and portions of SE¼SW¼ south and west of State Highway 111;
Sec. 28, W½ and SE¼;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, E½;
Sec. 32, all.
T. 8 S., R. 12 E.,
Sec. 6, lots 3 thru 28;
Sec. 8, lots 8 and 12 thru 16, NW¼NW¼, and SE¼SW¼;
Sec. 20, lots 1 and 2 and SE¼NE¼;
Sec. 22, lots 14 thru 20;
Sec. 26, lots 10, 11, 12, 14 thru 17, 24 thru 29, and 31 thru 34.
T. 9 S., R 11 E.,
Sec. 4, SW¼SW¼;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 7, SW¼ partly unsurveyed;
Sec. 8, all;
Sec. 10, portions of SW¼NE¼ south and west of State Highway 111, S½NW¼, SW¼, portions of N½SE¼ south and west of State Highway 111, and S½SE¼;
Sec. 14, portions of N½NW¼ south and west of State Highway 111, portions of the SE¼ south and west of State Highway 111, S½NW¼, and SW¼,
Sec. 18, 19, 20, and 22, unsurveyed;
Sec. 24, portions of SW¼NW¼NW¼ south and west of State Highway 111, portions of S½NW¼ south and west of State Highway 111, portions of SW¼ south and west of State Highway 111, portions of W½SE¼ south and west of State Highway 111, and portions of SE¼SE¼, south and west of State Highway 111;
Sec. 26, all;
Sec. 28, all, partly unsurveyed;
Sec.. 29 thru 34, unsurveyed.
T. 10 S., R. 11 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 8, 10, 12, and 14;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec.. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 32, 34 and 36.
T. 11 S., R. 11 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1, and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 8, 10, 12, and 14;
Sec. 16, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec.. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 32 and 34.
T. 12 S., R. 11 E.,
Sec. 2, lots 3 thru 7;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, N½SW¼, and SW¼SW¼;
Sec. 12, lot 1.
T. 11 S., R. 12 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 8, 10, 12, 14, and 16;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec.. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 and 2 of NW¼, lots 1 and 2, of SW¼, and E½;
Sec. 32 and 34.
T. 12 S., R. 12 E.,
Sec. 2, lots 3 thru 6, S½NE¼, S½NW¼, and SW¼;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼.
T. 15 S., R. 12 E.,
Sec. 31, N½N½SE¼, S½S½NE¼.
T. 16 S., R. 12 E.,
Sec. 29, S½SE¼;
Sec. 33, SW¼NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 34, NW¼SW¼.
T. 14 S., R. 13 E.,
Sec. 7, NE¼SE¼;
Sec. 32, lot 1 and SE¼SE¼;
Sec. 33, N½SW¼, NW¼NW¼, and SE¼NW¼.
T. 17 S., R. 13 E.,
Sec. 17, SW¼NW¼.

The areas described for Secretary's Order of October 19, 1920, aggregate 85,365.40 acres.

The total areas described for Yuma Reclamation Project aggregate 130,328.53 acres.

The Areas Described Aggregate 145,644.03 Acres in Imperial, and Riverside Counties, California

The withdrawals extended by this Order will expire 20 years from the effective date of this Order unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f), the Secretary determines that the withdrawals shall be further extended.

(Authority: 43 U.S.C. 1714)

Tanya Trujillo,

Assistant Secretary for Water and Science.

[FR Doc. 2022–14101 Filed 6–30–22; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034117; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of New Hampshire, Durham, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of New Hampshire has completed an inventory of human remains and an associated funerary object in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian Tribes or Native

Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and this associated funerary object should submit a written request to the University of New Hampshire. If no additional requestors come forward, transfer of control of the human remains and this associated funerary object to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and this associated funerary object should submit a written request with information in support of the request to the University of New Hampshire at the address in this notice by August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa MacFarlane, University of New Hampshire, Department of English, Hamilton Smith Hall, 95 Main Street, Durham, NH 03824, telephone (603) 862–1313, email *Lisa.MacFarlane@unh.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object under the control of the University of New Hampshire, Durham, NH. The human remains and associated funerary object were removed from Adams Point in Durham, Strafford County, NH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of New Hampshire professional staff in consultation with representatives of the Wampanoag Tribe of Gay Head (Aquinnah) and the following non-federally recognized Indian groups: Abenaki Nation of New Hampshire; Cowasuck Band of the Pennacook-Abenaki People; Ko'asek (Co'wasuck) Traditional Band of the Sovereign Abenaki Nation; and the Koasek (Cowasuck) Traditional Band of the Sovereign Abenaki Nation. In addition, the Mashpee Wampanoag Tribe (*previously* listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Mohegan Tribe of Indians of Connecticut (*previously* listed as Mohegan Indian Tribe of Connecticut); Narragansett Indian Tribe; Passamaquoddy Tribe; Penobscot Nation (*previously* listed as Penobscot Tribe of Maine); Stockbridge Munsee Community, Wisconsin; and three non-federally recognized Indian groups—the Abenaki Nation of Missisquoi (St. Francis/Sokoki Band); Koasek of the Koas of the Abenaki Nation; and Nulhegan Band of the Coosuk Abenaki Nation—were invited to consult but did not participate. Hereafter, all the Indian Tribes and groups listed in this section are referred to as ''The Consulted and Invited Tribes and Groups.''

History and Description of the Remains

Sometime in 1991, 1992, or 1994, human remains representing, at minimum, one individual were removed by archeologist Harold Hecker from Adams Point in Durham, Strafford County, NH. During 2019, when UNH reexamined every box in its collection, a tooth recorded as missing in an earlier UNH inventory was discovered. A petrous bone fragment was found in proximity to the tooth. Initially, it had been identified as faunal, but after in-depth research it was identified as human. The tooth and skull bone fragment most likely are from the same juvenile individual. The deciduous tooth and piece of skull (*i.e.,* petrous bone) belong to a juvenile of unknown sex. No known individual was identified. The one associated funerary object is a whole Jack's reef corner notched point made of jasper, a non-local lithic material, which was found in close proximity to the two human skeletal elements.

Adams Point lies in the Great Bay Estuary, a tidally dominated system that starts at the Atlantic Ocean with the Piscataqua River. As the Piscataqua River runs inland, it splits at a neck of land called today ''Dover Point.'' From there, eastward, it leads to Little Bay, which tightens at a strait (Furber Strait) before opening south to the Great Bay, the broad inner bay of the whole system. Adams Point is a jut of land at this strait, surrounded to the southwest by Crommet Creek, which confluxes with Great Bay at Adams Point. During his work at the site, Dr. Hecker identified four precontact sites, all in close proximity to each other. They are NH 40–14, NH 40–48, NH 40–4, and NH 40–50. Since Hecker's work, archeology has experienced a major shift from site-based approaches to landscape-scale perspectives.

The human remains listed in this notice came from NH 40–14. The site on this striking landform is located at a convergence zone of multiple waterscapes. Based on the cultural materials recovered—no C14 dating was done—Dr. Hecker concluded that the site dated predominantly to the late Middle Woodland Period (ca. A.D. 600–1000) with a small early Late Woodland component (ca. A.D. 1000–1200). He concluded the site was a locale that hosted short term occupations in late spring/early summer. As the site is located at the confluence of waterways, Hecker suggested it might have been a trading location where multiple precontact indigenous communities gathered. Indeed, given its location, Adams Point was accessible to multiple historically recorded groups, such as the Pennacook, the Abenaki, the Massachuset, and the Wampanoag, either because of proximity of territorial boundaries, or during seasonal rounds. The associated funerary object made of jasper likely was quarried in Eastern Pennsylvania, although jasper outcrops do exist in Massachusetts. Its presence testifies to the movement of precontact indigenous peoples in the region across vast waterways and landscapes. In the post-contact colonial period, when violence swept through southern New England, such as during King Philip's War, these long-established networks of relations were relied on by indigenous peoples from Massachusetts seeking refuge in the Great Bay Estuary, including Wampanoag peoples.

Determinations Made by the University of New Hampshire

Officials of the University of New Hampshire have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Wampanoag Tribe of Gay Head (Aquinnah).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Dr. Lisa MacFarlane, University of New Hampshire, Department of English, Hamilton Smith Hall, 95 Main Street, Durham, NH 03824, telephone (603) 862–1313, email *Lisa.MacFarlane@unh.edu,* by August 1, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Wampanoag Tribe of Gay Head (Aquinnah) may proceed.

The University of New Hampshire is responsible for notifying The Consulted and Invited Tribes and Groups that this notice has been published.

Dated: June 16, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–14093 Filed 6–30–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034118; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Shoshone National Forest, Cody, WY, and Buffalo Bill Historical Center, Cody, WY; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Shoshone National Forest, has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** of February 22, 2006. This notice corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Shoshone National Forest. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Shoshone National Forest at the address in this notice by August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Wade McMaster, Acting Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414, telephone (307) 578–5187, email *wade.mcmaster@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of Agriculture, Forest Service, Shoshone National Forest, Cody, WY, and in the physical custody of the Buffalo Bill Historical Center, Cody, WY. The human remains and associated funerary objects were removed from the Mummy Cave site in Park County, WY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the description of the human remains and the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (71 FR 9148, February 22, 2006). Following re-examination, the associated funerary objects now include all items removed from level 3/cultural level 36. Transfer of control of the items in this correction notice has not occurred.

Corrections

1. In the **Federal Register** of February 22, 2006, FR Doc #E6–2445, page 9148, column 2, paragraph 4, sentence 4, ''The one associated funerary object is a mountain sheep hide that was used to wrap the individual,'' is corrected by substituting the following sentence:

The 44 associated funerary objects are one lot of animal parts that include bone, hair, horn, antler, teeth, and hide; one lot of arrow shafts wrapped in sinew; one lot of grass bundles; two lots of burial matrix; one lot of burial stones; one lot of calcite crystals; one lot of charred wood; one lot of coiled basketry fragments; one coprolite containing cordage; one lot of cordage netting; one lot of feather and fibers; one lot of modified and unmodified feathers; one lot of fish parts; one lot of grass moccasin liners; one lot of knotted cordage; one lot of knotted fiber or netting; one lot of lithics; one lot of matted grass; one lot of moccasin fragments; one lot of modified animal hide with and without hair; one lot of modified bark; one lot of modified bone; one lot of modified plant fiber; one lot of modified wood; one lot of pigment contained in a bag; one lot of plant fiber; one lot of plant fiber cordage; one lot of reed fragments; one sheep skin robe; one roving; one lot of seeds; one lot of sewn animal hide with hair; one lot of shell; one lot of sinew; one lot of sticks and reeds with binding; one stone wrapped and tied with plant material; one lot of stones; one strung bow; one twisted wool cord; one lot of unmodified wood; one lot of worked animal horn; one lot of worked antler; and one piece of work fossilized wood.

2. In the **Federal Register** of February 22, 2006, FR Doc #E6–2445, page 9148, column 3, paragraph 1, sentence 2, ''The human remains, representing an older Native American male, were recovered from an intentional stone-covered burial in level 3 of the cave,'' is corrected by substituting the following sentence:

The human remains, representing a male aged 35–40 years, were recovered from an intentional burial in level 3/cultural level 36 of the cave.

In the **Federal Register** of February 22, 2006, FR Doc #E6–2445, page 9148, column 3, paragraph 2, sentence 2, ''Officials of Shoshone National Forest also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(3)(A), the 44 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wade McMaster, Acting Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414, telephone (307) 578–5187, email *wade.mcmaster@usda.gov,* by August 1, 2022. After that date, if no

additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming); and the Shoshone-Bannock Tribes of the Fort Hall Reservation may proceed.

The U.S. Department of Agriculture, Forest Service, Shoshone National Forest is responsible for notifying the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming) and the Shoshone-Bannock Tribes of the Fort Hall Reservation that this notice has been published.

Dated: June 22, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–14094 Filed 6–30–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034135; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains in consultation with the appropriate Indian Tribes and Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by August 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne Shuler, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 253–1265, email *mmshuler@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from site 1LA40 in Lawrence County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by TVA professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and The Muscogee (Creek) Nation (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1934, human remains representing, at minimum, 130 individuals were removed by the Alabama Museum of Natural History (AMNH) at the University of Alabama from site 1LA40, a cave in Lawrence County, AL, as part of TVA's Wheeler Reservoir Project. Details regarding the excavation of this site may be found in ''*An Archaeological Survey of Wheeler Basin on the Tennessee River in Northern Alabama,*'' by William S. Webb. Excavation took place in five-foot squares by removing six-inch levels (Webb 1939:68). Layers of ash and burned clay floors were encountered during excavation. Most of the habitation appears to have been near the mouth of the cave. Webb indicated that all the human burials had been disturbed prior to excavation. According to him, ''Human and animal remains were scattered throughout the deposits (1939:68).'' The human remains listed in this notice have been in the physical custody of the AMNH since they were excavated. The age and sex of these individuals is undetermined, No known individuals were identified. No associated funerary objects are present.

There are no known radiocarbon dates for this site. Artifacts recovered suggest occupations during both the Archaic and Mississippian periods.

Determinations Made by the Tennessee Valley Authority

Officials of the Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their presence in a prehistoric archeological site and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 130 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Ms. Marianne Shuler, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 253–1265, email *mmshuler@tva.gov,* by August 1, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Tennessee Valley Authority is responsible for notifying The Tribes and The Consulted Tribes that this notice has been published.

Dated: June 22, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–14095 Filed 6–30–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081G3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held virtually on Wednesday, August 17, 2022, from 9:30 a.m. to approximately 5:00 p.m. (MDT); and Thursday, August 18, 2022, from 9:30 a.m. to approximately 4:00 p.m. (MDT).

ADDRESSES: The virtual meeting held on Wednesday, August 17, 2022, may be accessed at: *https://rec.webex.com/rec/j.php?MTID=m2ac6c2cecbe198a24e26693ffb283017,* Meeting Number: 2761 935 7298, Password: Aug17.

The virtual meeting held on Thursday, August 18, 2022, may be accessed at: *https://rec.webex.com/rec/j.php?MTID=mde185a6cf327fad6b6ee62fa3b635bda,* Meeting Number: 2761 373 0874, Password: Aug18.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Callister, Bureau of Reclamation, telephone (801) 524–3781, email at *kcallister@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) current basin hydrology and water year 2023 operations; (2) experiments considered for implementation in 2023; (3) the status of threatened and endangered species; (4) long-term funding considerations; and (5) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Public Disclosure of Comments: Time will be allowed on both days for any individual or organization wishing to make extemporaneous and/or formal oral comments. To allow for full consideration of information by the AMWG members, written notice should be provided to Ms. Kathleen Callister (see **FOR FURTHER INFORMATION CONTACT**) prior to the meeting. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Any written comments received will be provided to the AMWG members.

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.

Authority: 5 U.S.C. appendix 2.

Kathleen Callister,

Division Manager, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2022–14062 Filed 6–30–22; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000.XXXR4081G3.RX.05940913.FY19340]

Call for Nominations for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The U.S. Department of the Interior (Interior) proposes to appoint members to the Glen Canyon Dam Adaptive Management Work Group (AMWG). The Secretary of the Interior (Secretary), acting as administrative lead, is soliciting nominations for qualified persons to serve as members of the AMWG.

DATES: Nominations must be postmarked by August 15, 2022.

ADDRESSES: Nominations should be sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138, or submitted via email to *borsha-ucr-gcdamp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Callister, Manager, Resources Management Division, at (801) 524–3781, or by email at *kcallister@usbr.gov.* Individuals who are hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The Grand Canyon Protection Act (Act) of October 30, 1992, Public Law 102–575; and the Federal Advisory Committee Act, as amended, 5 U.S.C. appendix 2 authorized creation of the AMWG to provide recommendations to the Secretary in carrying out the responsibilities of the Act to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including but not limited to, natural and cultural resources and visitor use.

The duties or roles and functions of the AMWG are in an advisory capacity only. They are to: (1) establish AMWG operating procedures, (2) advise the Secretary in meeting environmental and cultural commitments including those contained in the Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement and subsequent related decisions, (3) recommend resource management objectives for development and implementation of a long-term monitoring plan, and any necessary research and studies required to determine the effect of the operation of Glen Canyon Dam on the values for which Grand Canyon National Park and Glen Canyon Dam National Recreation Area were established, including but not limited to, natural and cultural resources, and visitor use, (4) review and provide input on the report identified in the Act to the Secretary, the Congress, and the Governors of the Colorado River Basin States, (5) annually review long-term monitoring data to provide advice on the status of resources and whether the Adaptive Management Program (AMP) goals and objectives are being met, and (6) review and provide input on all AMP activities undertaken to comply with applicable laws, including permitting requirements.

Membership Criteria

Prospective members of AMWG need to have a strong capacity for advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their stakeholder group. Membership from a wide range of disciplines and professional sectors is encouraged.

Members of the AMWG are appointed by the Secretary and are comprised of:

a. The Secretary's Designee, who serves as Chairperson for the AMWG.

b. One representative each from the following entities: The Secretary of Energy (Western Area Power Administration), Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and the Pueblo of Zuni.

c. One representative each from the Governors from the seven basin States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

d. Representatives from the general public as follows: two from environmental organizations, two from the recreation industry, and two from contractors who purchase Federal power from Glen Canyon Powerplant.

e. One representative from each of the following Interior agencies as ex-officio non-voting members: Bureau of Reclamation, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and National Park Service.

At this time, we are particularly interested in applications from representatives of the following:

a. one each from the basin states of California and Wyoming.

After consultation, the Secretary will appoint members to the AMWG. Members will be selected based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. AMWG member terms are limited to 3 years from their date of appointment. Following completion of their first term, an AMWG member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, AMWG will hold two in-person meetings and one webinar meeting per fiscal year. Between meetings, AMWG members are expected to participate in committee work via conference calls and email exchanges. Members of the AMWG and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the AMWG, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by 5 U.S.C. 5703.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified individuals for membership on the AMWG. Nominations from the seven basin states, as identified in this notice, need to be submitted by the respective Governors of those states, or by a state representative formally designated by the Governor. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than August 15, 2022 and sent to Mr. Daniel Picard, Deputy Regional Director, U.S. Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138.

Authority: 5 U.S.C. appendix 2.

Daniel Picard,

Deputy Regional Director, Alternate Designated Federal Officer, Interior Region 7: Upper Colorado Basin, Bureau of Reclamation.

[FR Doc. 2022–14061 Filed 6–30–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1330 (Review)]

Dioctyl Terephthalate From South Korea; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on dioctyl terephthalate from South Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2022. To be assured of consideration, the deadline for responses is August 1, 2022. Comments on the adequacy of responses may be filed with the Commission by September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Nayana Kollanthara (202–205–2043), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 18, 2017, the Department of Commerce

(''Commerce'') issued an antidumping duty order on imports of dioctyl terephthalate from South Korea (82 FR 39409). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is South Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* consisting of all dioctyl terephthalate coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* to consist of Eastman, the sole domestic entity engaged in dioctyl terephthalate production at that time.

(5) The *Order Date* is the date that the order under review became effective. In this review, the *Order Date* is August 18, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–532, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise*

in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 28, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14162 Filed 6–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–703 (Fifth Review)]

Furfuryl Alcohol From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2022. To be assured of consideration, the deadline for responses is August 1, 2022. Comments on the adequacy of responses may be filed with the Commission by September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari (202–205–3191), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 21, 1995, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of furfuryl alcohol from China (60 FR 32302). Commerce issued a continuation of the antidumping duty order on furfuryl alcohol from China following Commerce's and the Commission's first five-year reviews, effective May 4, 2001 (66 FR 22519), second five-year reviews, effective October 6, 2006 (71 FR 59072), third five-year reviews, effective February 16, 2012 (77 FR 9203), and fourth five-year reviews, effective August 9, 2017 (82 FR 37194). The Commission is now conducting a fifth five-year review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second, third, and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as furfuryl alcohol, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as QO Chemicals, generally known as Great Lakes, an integrated producer of furfuryl alcohol. In its full first five-year review determination, the Commission defined the *Domestic Industry* to encompass Penn Chemicals, Great Lakes (which had sold its facilities to Penn Chemicals in 1998), and two toll producers. In its expedited second, third, and fourth five-year review determinations, the Commission

defined a single *Domestic Industry* consisting of the sole domestic producer of furfuryl alcohol, Penn Chemicals (including its successor firm, Penn A Kem LLC).

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–533, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject*

*Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 28, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14161 Filed 6–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Fifth Review)]

Sulfanilic Acid from China and India; Termination of Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year reviews on April 1, 2022 (87 FR 19131) to determine whether revocation of the antidumping duty orders on sulfanilic acid from China and India, and the countervailing duty order on imports of sulfanilic acid from India would be likely to lead to continuation or recurrence of material injury. On June 14, 2022, the Department of Commerce published notice (87 FR 35968) that it was revoking the orders effective May 9, 2022, because no domestic interested party filed a timely notice of intent to participate. Accordingly, the subject reviews are terminated.

DATES: May 9, 2022 (applicable date of revocation of the order).

FOR FURTHER INFORMATION CONTACT: Nayana Kollanthara (202–205–2043), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 28, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14111 Filed 6–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–410 (Fifth Review)]

Light-Walled Rectangular Pipe and Tube from Taiwan; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on light-walled rectangular pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2022. To be assured of consideration, the deadline for responses is August 1, 2022. Comments on the adequacy of responses may be filed with the Commission by September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 27, 1989, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of light-walled rectangular pipe and tube from Taiwan (54 FR 12467). Commerce issued a continuation of the antidumping duty order on light-walled rectangular pipe and tube from Taiwan following Commerce's and the Commission's first five-year reviews, effective August 22, 2000 (65 FR 50955), second five-year reviews, effective August 9, 2006 (71 FR 45521), third five-year reviews, effective February 2, 2012 (77 FR 5240), and fourth five-year reviews, effective August 9, 2017 (82 FR 37193). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first and second five-year review determinations, and its expedited third and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as light-walled rectangular pipe and tube coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original investigation determination, its full first and second five-year review determinations, and its

expedited third and fourth five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of light-walled rectangular pipe and tube.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–534, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject*

*Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 28, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14160 Filed 6–30–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Marine Terminal Operations and Longshoring Standards

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 August 1, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collections of information required from employers by OSHA are necessary to determine compliance with requirements that are intended to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo manual cargo handling, and exposure to hazardous atmospheres. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 29, 2022 (87 FR 18041).

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–OSHA.

Title of Collection: Marine Terminal Operations and Longshoring Standards.

OMB Control Number: 1218–0196.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 1,180.

Total Estimated Number of Responses: 237,020.

Total Estimated Annual Time Burden: 55,030 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–14071 Filed 6–30–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Job Openings and Labor Turnover Survey.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 30, 2022.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Job Openings and Labor Turnover Survey (JOLTS) collects data on job vacancies, labor hires, and labor separations. As the monthly JOLTS time series grow longer, their value in assessing the business cycle, the difficulty that employers have in hiring workers, and the extent of the mismatch between the unused supply of available workers and the unmet demand for labor by employers will increase. The study of the complex relationship

between job openings and unemployment is of particular interest to researchers. While these two measures are expected to move in opposite directions over the course of the business cycle, their relative levels and movements depend on the efficiency of the labor market in matching workers and jobs.

Along with the job openings rate, trends in hires and separations may broadly identify which aggregate industries face the tightest labor markets. The quits rate, the number of persons who quit during an entire month as a percentage of total employment, may provide clues about workers' views of the labor market or their success in finding better jobs. In addition, businesses will be able to compare their own turnover rates to the national, regional, and major industry division rates.

The BLS uses the JOLTS form to gather employment, job openings, hires, and total separations from business establishments. The information is collected once a month at the BLS Data Collection Center (DCC) in Atlanta, Georgia. The information is collected using Computer Assisted Telephone Interviewing (CATI), Web, email, and FAX. An establishment is in the sample for 36 consecutive months.

II. Current Action

Office of Management and Budget clearance is being sought for the Job Openings and Labor Turnover Survey (JOLTS). The BLS is requesting an extension to the existing clearance for the JOLTS. There are no major changes being made to the forms, procedures, data collection methodology, or other aspects of the survey. Increasing public interest in the JOLTS Survey has led to the addition of state estimates and has broadened incorporation of JOLTS data in economic analyses conducted by Federal, State, and major economic research organizations.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• 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.

Title of Collection: Job Openings and Labor Turnover Survey.

OMB Number: 1220–0170.

Type of Review: Extension.

Affected Public: Federal Government; State, Local, or Tribal governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses and organizations.

Affected public	Total respondents	Frequency	Total responses	Average time per response (min.)	Estimated total burden
Private	7,155	Monthly	85,858	10	14,310
State, Local, & Tribal Gov't	1,123	Monthly	13,474	10	2,246
Federal Gov't	386	Monthly	4,637	10	773
Totals	8,664	Monthly	103,968	10	17,328

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on June 24, 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–14075 Filed 6–30–22; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0147]

Proposed Extension of Information Collection; Coal Mine Dust Sampling Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Coal Mine Dust Sampling Devices.

DATES: All comments must be received on or before August 30, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0028.

• *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. 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.

• MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Continuous Personal Dust Monitors (CPDMs) estimates the concentration of respirable dust in coal mines. CPDMs must be designed and constructed for coal miners to wear and operate without impeding their ability to perform their work safely and effectively, and must be durable to perform reliably in normal working conditions of coal mines. Paperwork requirements imposed on applicants are related to the application process and CPDM testing procedures.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Coal Mine Dust Sampling Devices. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. 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.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Coal Mine Dust Sampling Devices. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0147.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Frequency: On occasion.

Number of Responses: 1.

Annual Burden Hours: 41 hours.

Annual Respondent or Recordkeeper Cost: $301,810.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–14073 Filed 6–30–22; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22 –047)]

NASA Advisor Council, Human Exploration and Operations Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration Committee of the NASA Advisory Council (NAC). This Committees report to the NAC.

DATES: Wednesday, July 20, 2022, 1:00 p.m. to 3:30 p.m., Eastern Time.

ADDRESSES: Due to current COVID–19 issues affecting NASA Headquarters occupancy, public attendance will be virtual only, see dial-in and WebEx information below under ''Supplementary Information.''

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration Committee, NASA Headquarters, Washington, DC 20546, via email at *bette.siegel@nasa.gov* or 202–358–2245.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be open to the public via Webex and telephonically. Webex connectivity information is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed. On Wednesday, July 20 2022, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m823cdaefeae3b42f2c26c140b6ecd593.*

The event number is 2762 523 0299 and the event password is axPkpwJ2*36 (29757952 from phones). If needed, the U.S. toll conference number is+1–929–251–9612 and 1–415–527–5035 and access code is 2762 523 0299.

The agenda for the meeting includes the following topics:

Exploration Systems Development Mission Directorate and Space Operations Mission Directorate program discussion and recommendations.

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–14056 Filed 6–30–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Request for Information on the Federal Big Data Research and Development Strategic Plan Update

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF).

ACTION: Request for Information (RFI).

SUMMARY: The NITRD NCO and NSF, as part of the NITRD Big Data interagency working group (BD IWG), request input from all interested parties as the IWG prepares updates to the *Federal Big Data*

Research and Development Strategic Plan. Through this RFI, the NITRD NCO seeks input from the public, including academia, government, business, and industry groups of all sizes; those directly performing Big Data research and development (R&D); and those directly affected by such R&D, on ways in which the strategic plan should be revised and improved. The public input provided in response to this RFI will assist the NITRD BD IWG in updating the *Federal Big Data Research and Development Strategic Plan.*

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. (ET) on July 29, 2022.

ADDRESSES: Comments submitted in response to this notice may be sent by any of the following methods:

- *Email, BDStrategicPlan-RFI@nitrd.gov:* Email submissions should be machine-readable and not be copy-protected; submissions should include ''RFI Response: Federal Big Data Research and Development Strategic Plan Update'' in the subject line of the message.
- *Mail,* Attn: Ji Lee, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI is voluntary. Each participating individual or institution is asked to submit only one response. Submissions must not exceed 10 pages in 12-point or larger font, with a page number provided on each page [*optional*]. Include the name of the person(s) or organization(s) filing the comment in your response. Responses to this RFI may be posted online at *https://www.nitrd.gov.* Therefore, we request that no business proprietary information, copyrighted information, or sensitive personally identifiable information be submitted as part of your response.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

FOR FURTHER INFORMATION CONTACT: Ji Lee at *BDStrategicPlan-RFI@nitrd.gov* or (202) 459–9679. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. (ET) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background: The NITRD Subcommittee of the National Science and Technology Council coordinates multiagency R&D programs to help ensure continued U.S. leadership in networking and information technology, satisfy the needs of the Federal Government for advanced networking and information technology, and accelerate development and deployment of advanced networking and information technology. In 2016, the NITRD Subcommittee released the *Federal Big Data Research and Development Strategic Plan.* The plan drew upon activities started under the Big Data Research and Development Initiative that the Obama Administration launched in 2012 to harness benefits from the many rich sources of Big Data.

The 2016 strategic plan identified seven strategies representing key areas for Big Data R&D that Federal agencies could use when developing or expanding their individual Big Data R&D plans:

- *Strategy 1: Create next-generation capabilities by leveraging emerging Big Data foundations, techniques, and technologies.*
- *Strategy 2: Support R&D to explore and understand trustworthiness of data and resulting knowledge, make better decisions, enable breakthrough discoveries, and take confident action.*
- *Strategy 3: Build and enhance research cyberinfrastructure that enables Big Data innovation in support of agency missions.*
- *Strategy 4: Increase the value of data through policies that promote sharing and management of data.*
- *Strategy 5: Understand Big Data collection, sharing, and use with regard to privacy, security, and ethics.*
- *Strategy 6: Improve the national landscape for Big Data education and training to fulfill increasing demand for both deep analytical talent and analytical capacity for the broader workforce.*
- *Strategy 7: Create and enhance connections in the national Big Data innovation ecosystem.*

In the decade since the Big Data Research and Development Initiative was launched, significant progress has been made in many research areas, and a Big Data innovation ecosystem continues to evolve among Federal agencies, leading to enhanced knowledge discovery and more informed decision-making. Instrumented systems and environments are becoming the norm, large numbers of heterogeneous sensors and sensor networks are being deployed to collect vast amounts of data, and new capabilities are emerging to integrate and organize this information in a timely fashion. There have been significant changes in the ways data are captured, used, stored, and shared.

In response, the NITRD BD IWG is revisiting the strategies listed in the original plan to identify areas that should continue to be priority areas for federally funded research, new areas of risk or opportunity, and options for leveraging collaborations with other segments of the data innovation ecosystem to accelerate innovation, improve inclusive and equitable access, and broaden participation in Big Data R&D.

Objectives: The NITRD NCO seeks input on potential revisions to the 2016 *Federal Big Data Research and Development Strategic Plan* to reflect priorities related to Big Data R&D. Responders are asked to answer one or more of the following questions in response to the RFI:

1. What areas of research or topics of the 2016 *Federal Big Data Research and Development Strategic Plan* should continue to be a priority for federally funded research and require continued Federal R&D investments? What areas of research or topics of the plan no longer need to be prioritized for federally funded research?

2. What challenges or objectives not included in the 2016 *Federal Big Data Research and Development Strategic Plan* should be strategic priorities for federally funded Big Data R&D? Discuss what new capabilities would be desired, what objectives should guide such research, and why those capabilities and objectives should be strategic priorities.

3. What are emerging and future scientific and technical challenges and opportunities that are central to enabling extraction of knowledge and insight from Big Data across the data lifecycle (including capabilities for collection, storage, access, analysis, and reuse of Big Data)? Which of the challenges and opportunities are still appropriate for Federal research funding?

4. What are appropriate models for partnerships among government, academia, and industry in Big Data, and how can these partnerships be effectively leveraged to enhance innovation in Big Data R&D?

5. How do we nurture, develop, and enhance a diverse, inclusive, and sustainable workforce of cyberinfrastructure professionals and practitioners for Big Data R&D? What are some effective ways to broaden participation in Big Data R&D?

6. What are the future national-level use cases that will drive future federally funded Big Data R&D? Please describe these uses cases and applicable research that the R&D will drive. Are there other industry or international initiatives that

are synergistic with federally funded Big Data research?

Reference: Federal Big Data Research and Development Strategic Plan (May 2016): *https://www.nitrd.gov/pubs/bigdatardstrategicplan.pdf.*

Submitted by the National Science Foundation in support of the NITRD NCO on 06/28/2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–14084 Filed 6–30–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

ADDRESSES: Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Munz at the above address or (703) 292–2478.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Karen Marrongelle, Chief Operating Officer, Chairperson
Wonzie Gardner, Jr., Chief Human Capital Officer and Office Head, Office of Information and Resource Management
Janis Coughlin-Piester, Deputy Office Head, Office of Budget, Finance and Award Management
Sean Jones, Assistant Director, Directorate for Mathematical and Physical Sciences
Erwin Gianchandani, Assistant Director, Directorate for Technology, Innovation and Partnerships
Evan Heit, Division Director, Division of Research on Learning in Formal and Informal Settings, Directorate for Education and Human Resources
Maren Williams, Division Director, Division of Administrative Services, Office of Information and Resource Management
William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: June 27, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–14083 Filed 6–30–22; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34638; File No. 812–15336]

Goldman Sachs Trust II, et al

June 27, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(c) of the Act.

Summary of Application: The requested exemption would permit a Trust's board of trustees (the ''Board'') to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements without complying with the in-person meeting requirement of Section 15(c) of the Act.

Applicants: Goldman Sachs Trust II (the ''Trust''), Goldman Sachs Asset Management, L.P. (''GSAM''), and Goldman Sachs Asset Management International (''GSAMI'').

Filing Dates: The application was filed on May 13, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 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 emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Caroline L. Kraus, Goldman Sachs & Co., 200 West Street, 15th Floor, New York, New York 10282, Stephen H. Bier, Esq., Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, and Brenden P. Carroll, Dechert LLP, 1900 K Street Northwest, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated May 13, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–14077 Filed 6–30–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95164; File No. SR–NASDAQ–2022–037]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fees Concerning Enterprise Licenses at Equity 7, Section 123(c)

June 27, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees to add two new features to the enterprise licenses at Equity 7, Section 123(c). First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section. Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses. The Proposal also includes a number of technical and conforming changes, described in further detail below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As explained above, the Exchange proposes to add two new features to the enterprise licenses at Equity 7, Section 123(c).

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses.

The Exchange also proposes two sets of conforming changes. First, Nasdaq proposes to remove the $100,000 enterprise license at Section 123(c)(2) as redundant. The newly-modified $25,000 enterprise license at Section 123(c)(1) will have exactly the same features as the current $100,000 at Section 123(c)(2), rendering the latter unnecessary. Second, the Exchange proposes a few conforming changes related to paragraph numbering and presentation, discussed in detail below.[3]

Products and Current Fees

Nasdaq TotalView

Nasdaq TotalView provides customers with all orders and quotes from Nasdaq members displayed in the Nasdaq Market Center, as well as the aggregate size of such orders and quotes at each price level executed at the Nasdaq Market Center, with respect to stocks listed on Nasdaq and those listed on NYSE, NYSE American, and regional exchanges.[4] Customers that purchase TotalView also receive the Net Order Imbalance Indicator (''NOII''), a supply and demand monitor that provides information leading up to key liquidity events such as the Open, Close, Halt Resumptions, and Initial Public Offerings (''IPOs'').[5] For IPOs, NOII shows the details of all orders during the pre-IPO quoting period and the number of shares and orders that would execute if the cross were to occur at an indicative price and time.

Customers that purchase Nasdaq TotalView pay per Subscriber fees as set forth at Equity 7, Section 123(b)(2). In the alternative, Nasdaq offers customers the option of lowering their costs by purchasing one of three different enterprise licenses.

The first of these three, set forth in Section 123(c)(1), permits the dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship, for a monthly fee of $25,000, plus Professional and Non-Professional Subscriber fees.[6]

The second, at Section 123(c)(2), permits dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, as well as External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship.[7] The monthly fee for this license is $100,000, plus Professional and Non-Professional Subscriber fees. The key difference between the first and second licenses is the latter allows External Distribution to Professionals.

The third, at Section 123(c)(3), permits Internal and External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship for a monthly fee of $500,000.[8] The key difference between

[3] *See infra* note 17.

[4] *See* Equity 7, Section 123 (a)(1)(B) (''Nasdaq TotalView means, with respect to stocks listed on Nasdaq and on an exchange other than Nasdaq, all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center.''). Nasdaq TotalView is one of two Depth-of-Book feeds. The other is Nasdaq Level 2. *See* Section 123(a)(1) (defining Depth-of-Book as ''data feeds containing price quotations at more than one price level,'' and identifying the two Depth-of-Book fees as Nasdaq Level 2 and Nasdaq TotalView); *see also* Nasdaq TotalView (product description), available at *https://www.nasdaq.com/solutions/nasdaq-totalview.*

[5] *See* Securities Exchange Act Release No. 79863 (January 23, 2017), 82 FR 8632 (January 27, 2017) (SR–NASDAQ–2017–004).

[6] *See* Equity 7, Section 123 (c)(1) (''A Distributor that is also a broker-dealer pays a monthly fee of $25,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of $9 for each Non-Professional Subscriber and a monthly fee of $60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.'').

[7] *See* Equity 7, Section 123 (c)(2) (''A Distributor that is also a broker-dealer pays a monthly fee of $100,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of $9 for each Non-Professional Subscriber and a monthly fee of $60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.'').

[8] *See* Section 123 (c)(3) (''As an alternative to subsections (1) and (2) above, a Distributor that is also a broker-dealer may pay a monthly fee of $500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or

the third enterprise license and the first two is that the third has no Professional or Non-Professional Subscriber fees.

Enhanced Display Solution

An Enhanced Display Solution (''EDS'') allows the purchaser to display Depth-of-Book data and connect to an Application Programming Interface (''API'') that allows users to export data to a display application of their choosing.[9] EDS is available for Display Usage [10] only, and may not be used for Non-Display [11] purposes.[12]

Customers that wish to purchase EDS pay a Distributor fee [13] and a per Subscriber fee.[14] EDS may also be purchased through an enterprise license for $33,500 per month.[15]

Proposed Changes

As explained above, the Exchange proposes to add two features to the enterprise licenses at Equity 7, Section 123(c).

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to allow distribution of data externally to Professionals as well as Non-Professionals. The Exchange will charge no additional fees for this external distribution beyond the per Subscriber charges already set forth in that section. To accomplish this, the Exchange proposes to add Professional Subscribers to the list of users eligible for External Distribution in that subsection.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using EDS for the same per Subscriber fee paid by a purchaser of any of the Section 123(c) enterprise licenses. Under the current rule, Distributors that subscribe to the enterprise depth fees at Section 123(c) are exempt from paying EDS Distributor fees.[16] The proposed change is to add a clause exempting such purchasers from the EDS per Subscriber fees as well. Such customers would pay only the applicable per Subscriber fees set forth in Section 123(c).

As a conforming change, the Exchange proposes to remove the $100,000 enterprise license at Section 123(c)(2) as redundant. As explained above, the newly modified $25,000 enterprise license at Section 123(c)(1) will have exactly the same features that the $100,000 at Section 123(c)(2) has currently, rendering the latter unnecessary. The Proposal also includes a number of other minor conforming changes to paragraph numbering and presentation.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[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' . . . . '' [20] Market data, often mistakenly characterized as the ''exhaust'' of an exchange, is related to order flow because it advertises liquidity available on the exchange, which encourages firms to send more order flow to the exchange.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [21]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [22] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.

Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.'').

[9] *See* Securities Exchange Act Release No. 80015 (February 10, 2017), 82 FR 10944 (February 16, 2017) (SR–NASDAQ–2017–007).

[10] *See* Equity 7, Section 123(a)(2)(A) (''Display Usage means any method of accessing Depth-of-Book data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons . . . '').

[11] *See* Equity 7, Section 123(a)(2)(B) (''Non-Display Usage means any method of accessing Depth-of-Book data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'').

[12] *See* Securities Exchange Act Release No. 73807 (December 10, 2014), 79 FR 74784 (December 16, 2014) (SR–NASDAQ–2014–117) (''While Distributors are not required to technically control against non-display usage (due to the difficulty of achieving such control), the Distributor is required to restrict non-display usage contractually by including such restrictions in any agreements with recipients of the Information.''); *see also* Nasdaq, US Equities and Options Data Policies at 20–21, available at *http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/USEquitiesandOptionsDataPolicies.pdf.*

[13] *See* Equity 7, Section 126(a)(1). The Distributor fee is based on the number of users, as follows: $4,000/month for 1–399 users; $7,500/month for 400–999 users; $15,000/month for 1,000 users.

[14] The per Subscriber fee is $80 per month for Professionals, and the underlying rate for Nasdaq Level 2 or TotalView for Non-Professionals. *See* Equity 7, Section 126(a)(1)(B).

[15] *See* Equity 7, Section 126(a)(1)(C) (''EDS Distributors may elect to purchase an Enterprise License for $33,500 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of $76 for TotalView and/or Level 2, notwithstanding the fees set forth in subsection (B) above.'').

[16] *See* Equity 7, Section 126(a)(1)(A).

[17] The Exchange proposes the following additional conforming changes: (i) change the numbering of current subparagraph 123(c)(3) to 123(c)(2) to reflect removal of the current $100,000 enterprise license and to remove references to the former paragraph; (ii) substitute the word ''license'' for ''depth'' at Section 126(a)(1)(A) as a more accurate description of the license at Section 123(c); and (iii) remove the asterisk from Section 123(c), given that the modified subsection no longer applies solely to Distributor fees.

[18] *See* 15 U.S.C. 78f(b).

[19] *See* 15 U.S.C. 78f(b)(4) and (5).

[20] *See NetCoalition,* 615 F.3d at 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)).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [23] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [24] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [25]

This specific Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. The options available to a particular customer depends on that customer's use cases. The Proposal will enable a customer that currently purchases the $25,000 enterprise license at Section 123(c)(1) to distribute information externally to Professional Subscribers, enhancing the value of that license. A customer that would otherwise purchase the $100,000 enterprise license at Section 123(c)(2) would be able to obtain the same service for the lower monthly fee of $25,000 under the proposed modifications. A customer that currently purchases the $25,000 license at proposed Section 123(c)(1) and also uses EDS as a delivery method would be able to pay the relatively lower per Subscriber fees at the proposed Section 123(c)(1). A customer that pays for the $500,000 enterprise license at proposed Section 123(c)(2) and uses EDS would be required to pay no additional per Subscriber fees at all.

All of these proposed modifications enhance customer choice. If the total cost of service based on the underlying fees exceeds the cost of the enterprise license, the customer will purchase the enterprise license to reduce cost; otherwise, the customer will not. Customer choice—the customer's ability to choose whether or not to purchase an enterprise license depending on whether the purchase is economically advantageous—is a competitive force that constrains the ability of the Exchange to charge excessive fees for enterprise licenses.

The proposed changes are not unfairly discriminatory. As explained above, a customer chooses whether to purchase an enterprise license based on its economic benefits. Customers that choose to avail themselves of the additional features will benefit. Customers that do not choose to purchase any of these licenses, or which choose not to avail themselves of the additional features, will remain unaffected.

The enterprise licenses subject to the Proposal are available to all potential customers on a non-discriminatory basis. They are entirely optional in that Nasdaq is not required to offer them and customers are not required to purchase them. Customers can discontinue their use at any time and for any reason, including an assessment of the fees charged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Because competitors are free to modify their own fees in response to proposed changes, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As explained above, the Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. Customers that choose to purchase the enterprise licenses will benefit from lower fees and enhanced features. Customers that elect not to purchase the enterprise licenses, or not to avail themselves of the additional services, will remain unaffected.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because all self-regulatory organization will have the option of proposing changes to their own fee schedules.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase an enterprise license depending on whether it is economically advantageous for it to do so.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[26]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2022–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–037. 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

[23] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[24] *See id.*

[25] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–037 and should be submitted on or before July 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–14064 Filed 6–30–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95165; File No. SR–FINRA–2022–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6750 Regarding the Publication of Aggregated Transaction Information on U.S. Treasury Securities

June 27, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6750 to provide that FINRA may publish or distribute aggregated transaction information and statistics on U.S. Treasury Securities on a more frequent basis.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On July 10, 2017,[3] FINRA members began reporting information on transactions in U.S. Treasury Securities[4] to the Trade Reporting And Compliance Engine (TRACE).[5] Information reported to TRACE regarding individual transactions in U.S. Treasury Securities is used for regulatory and other official sector purposes and is not published or disseminated.[6] On December 20, 2019, the SEC approved amendments to Rule 6750 (Dissemination of Transaction Information) to allow FINRA to publish weekly aggregated transaction information and statistics on U.S. Treasury Securities at no charge (unless FINRA submits a rule filing imposing a fee for such data).[7] Pursuant to amended Rule 6750.01(b), on March 10, 2020 FINRA began posting on its website weekly, aggregate data on the trading volume of U.S. Treasury Securities reported to TRACE.[8]

FINRA has received favorable feedback on the weekly aggregated trading volume data for U.S. Treasury Securities that is currently made available on its website and, in consultation with the Treasury Department, now believes it would be appropriate to increase the cadence of this aggregated data. Accordingly, FINRA is proposing to amend paragraph (b) of Supplementary Material .01 to Rule 6750 to delete the word ''weekly'' so as to permit more frequent publication of aggregated U.S. Treasury Security transaction information and statistics, such as on a daily basis.[9]

FINRA notes that the more frequent aggregated U.S. Treasury Security data would continue to *not* identify individual market participants or transactions, and FINRA would continue to *not* publish aggregated transaction information and statistics by individual U.S. Treasury Security (except for the category of on-the-run

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See Regulatory Notice* 16–39 (October 2016) (SEC Approves Rule Change to Require Reporting of Transactions in U.S. Treasury Securities to the Trade Reporting and Compliance Engine (TRACE)); *see also* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Order Granting Accelerated Approval of File No. SR–FINRA–2016–027).

[4] Under Rule 6710(p), a ''U.S. Treasury Security'' means a security, other than a savings bond, issued by the U.S. Department of the Treasury (the ''Treasury Department'') to fund the operations of the federal government or to retire such outstanding securities. The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the Treasury Department.

[5] FINRA's TRACE rules apply only to FINRA members. However, FINRA notes that certain banks that are not FINRA members will begin reporting information on transactions in specified fixed income securities to TRACE starting on September 1, 2022 pursuant to requirements adopted by the Board of Governors of the Federal Reserve System. *See* Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 86 FR 59716 (October 28, 2021) (Federal Reserve approval to implement the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100–NEW)).

[6] Rule 6750(c)(5) provides that FINRA will not disseminate information on U.S. Treasury Securities.

[7] *See* Securities Exchange Act Release No. 87837 (December 20, 2019), 84 FR 71986 (December 30, 2019) (Order Approving File No. SR–FINRA–2019–028).

[8] *See* FINRA Press Release, FINRA Launches New Data on Treasury Securities Trading Volume, *available at https://www.finra.org/media-center/newsreleases/2020/finra-launches-new-data-treasury-securities-trading-volume.*

[9] As it has done previously, FINRA may also continue to modify and enhance the format and content of the aggregate U.S. Treasury Security data (*e.g.,* by adding aggregate trade count and pricing information). For example, in 2021, FINRA enhanced the format of the weekly aggregate data to include a new maturity category for nominal coupons: ''Greater than 10 years and less than or equal to 20 years.'' This category was intended to highlight the on-the-run 20-year bond and provide volume information for off-the-run Treasury bonds whose remaining maturity fall within the maturity band. *See Technical Notice* (April 29, 2021) (Enhancements to Weekly Aggregated Reports and Statistics for U.S. Treasury Securities).

U.S. Treasury Securities because there is only one on-the-run security at a time for each subtype and maturity).[10] The aggregate U.S. Treasury Security data would also continue to be provided at no charge (unless FINRA submits a rule filing to impose a fee for this data). FINRA believes that the proposed rule change will benefit investors and market participants by providing timelier insight into U.S. Treasury market activity, while maintaining the confidentiality of individual market participants and transactions.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[12] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change will benefit investors and market participants by providing additional insights into U.S. Treasury Security transaction volume, while maintaining the confidentiality of individual market participants and transactions. Accordingly, FINRA believes the proposed rule change is in the public interest and will help provide greater transparency in U.S. Treasury Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and any alternatives considered in assessing how to best meet the proposal's regulatory objectives.

Regulatory Need

The purpose of the proposal is described above and is consistent with TRACE transparency initiatives.

Economic Baseline

As mentioned above, in July 2017, FINRA member firms began reporting transactions in U.S. Treasury Securities to TRACE.[13] Currently, there is no dissemination of transactions to the public, either real-time or on a delayed basis, as member firms report trade activity in U.S. Treasury Securities to TRACE for regulatory purposes only.

There is currently limited publicly available information on U.S. Treasury Security transaction volume. The Federal Reserve Bank of New York publishes average daily trading volume and end-of-the-week positions of primary dealers in U.S. Treasury Securities on a weekly basis.[14] As noted above, in March 2020, FINRA began publishing weekly aggregate volume data in Treasury Securities.[15]

Economic Impacts

The proposed dissemination of more frequent aggregate volume data in U.S. Treasury Securities would not impose any additional requirements on firms. The aggregate volume data published by FINRA will continue to be derived from trade reports already required to be submitted to TRACE. In addition, because the data would be available free of charge, FINRA does not believe that there would be any direct costs associated with the proposal for firms, investors or data consumers.

FINRA expects that the proposed rule change would help market participants better understand the overall trading of U.S. Treasury Securities by providing more timely information that could be utilized in assessing where liquidity is concentrated by security characteristic and market segment. FINRA believes that publishing more frequent aggregated data on U.S. Treasury Securities transactions would further benefit market participants and the investor community by enhancing overall transparency.

FINRA also considered information leakage concerns, *i.e.,* whether market participants' proprietary trading strategy could be discerned from the published data. FINRA believes that the aggregated framework mitigates these concerns. As is the case under the current rule, aggregated transaction information and statistics on U.S. Treasury Securities will not be published or distributed by individual security (except for aggregated data that includes on-the-run U.S. Treasury Securities that may have had only one on-the-run security during the aggregated period) and will not identify individual market participants or transactions.

Alternatives Considered

No other alternatives were considered for the proposed dissemination framework.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–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.

[10] *See* Rule 6750.01(b), which currently provides that aggregated transaction information and statistics on U.S. Treasury Securities will not be published or distributed by individual security (except for aggregated data that includes on-the-run U.S. Treasury Securities that may have had only one on-the-run security during the aggregated period), and will not identify individual market participants or transactions.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(9).

[13] *See supra* note 3.

[14] *See https://www.newyorkfed.org/markets/primarydealers* for the definition of ''primary dealers'' and the weekly statistics.

[15] *See supra* note 8.

All submissions should refer to File Number SR–FINRA–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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–017 and should be submitted on or before July 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–14066 Filed 6–30–22; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95161; File No. SR–FINRA–2022–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Expand TRACE Reporting Requirements to Trades in U.S. Dollar-Denominated Foreign Sovereign Debt Securities

June 27, 2022.

On May 6, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain rules in the Rule 6700 Series (Trade Reporting and Compliance Engine (TRACE)) to require members to report to TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities for regulatory purposes. The proposed rule change was published for comment in the **Federal Register** on May 17, 2022.[3]

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 1, 2022.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change in order to consider the proposed rule change and the comments received on the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 15, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–FINRA–2022–011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–14065 Filed 6–30–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94891 (May 11, 2022), 87 FR 29980 (May 17, 2022). Comments received on the proposed rule change are available at *https://www.sec.gov/comments/sr-finra-2022-011/srfinra2022011.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before August 1, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov*; (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In 2019 and 2021, a new cohort of sites was added to the Regional Innovation Clusters (RIC) initiative, which was originally started in October 1, 2010 by the Small Business Administration (SBA)'s Office of Entrepreneurial Development. Through this initiative, organizations in 23 communities across

the U.S. have been selected to provide industry-specific assistance to small businesses, and to develop industry relationships and supply chains within their regions. Clusters—geographically concentrated groups of interconnected businesses, suppliers, service providers, and associated institutions in a particular industry or field—act as a networking hub to convene a number of resources to help navigate the funding, procurement, and supply-chain opportunities in a specific industry.

SBA is conducting an evaluation of the Regional Innovation Clusters initiative to determine how the clusters have developed, the type and volume of services they provided to small businesses, client perceptions of the program, and the various outcomes related to their existence, including collaboration among firms, innovation, and small business growth. Small business growth will be compared to the overall growth of firms in those same regions and industries. This evaluation will also include lessons learned and success stories. SBA proposes the use of three instruments for data collection and analysis of three distinct populations. These instruments are: (1). Small Business Survey, (2.) Large Organization Survey and (3.) Cluster Administrator Survey. In addition, SBA plans to interview each of the 11 cluster administrators several times a year regarding program impact and successes or challenges, and to obtain clarifications on information provided in quarterly reports. Each of the proposed surveys will be administered electronically and will contain both open- and close-ended questions. The information collected and analyzed from these instruments will contribute to monitoring performance metrics and program goals, as well as recommendations on improving program practices.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0392.

Title: Regional Innovation Clusters (RIC) Initiative Evaluation Study.

Description of Respondents: Interconnected businesses, Suppliers, Service providers, and associated institutions.

Form Number: N/A.

Estimated Annual Responses: 1,240.

Estimated Annual Hour Burden: 388.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–14097 Filed 6–30–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0019]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Center for Medicare & Medicaid Services (CMS). This matching agreement establishes the terms, conditions, and safeguards under which CMS will disclose to SSA Medicare non-utilization information for Social Security Title II beneficiaries aged 90 and above. CMS will identify Medicare enrollees whose records have been inactive for three or more years. SSA will use this data as an indicator to select and prioritize cases for review to determine continued eligibility for benefits under Title II of the Social Security Act (Act). SSA will contact these individuals to verify ongoing eligibility. SSA will use this data for the purposes of fraud discovery and the analysis of fraud program operations; this agreement allows for SSA's Office of Anti-Fraud Programs (OAFP) to evaluate the data for the purposes of fraud detection. SSA will refer individual cases of suspected fraud, waste, or abuse to the Office of the Inspector General (OIG) for investigation.

DATES: The deadline to submit comments on the proposed matching program is August 1, 2022. The matching program will be applicable on July 1, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2022–0019 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the *Search* function to find docket number SSA–2022–0019 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION:

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and CMS.

Authority for Conducting the Matching Program

The legal authority for this agreement is executed in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988 (Pub. L. 100–503), including 5 U.S.C. 552a(b)(3); section 1106 of the Act (42 U.S.C. 1306); and Office of Management and Budget (OMB)

guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

Section 202 of the Act (42 U.S.C. 402) outlines the requirements for eligibility to receive Old-Age, Survivors, and Disability Insurance Benefits under Title II of the Act. Section 205(c) of the Act (42 U.S.C. 405) directs the Commissioner of Social Security to verify the eligibility of a beneficiary.

This matching program employs CMS systems containing Protected Health Information (PHI) as defined by Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR 160 and 164 (78 FR 5566, Parts A and E, published January 25, 2013)). PHI authorized by the routine uses may only be disclosed by CMS if, and as permitted or required by the ''Standard for Privacy in Individually Identifiable Health Information,'' (45 CFR 164.512d).

Purpose(s)

This matching program establishes the terms, conditions, and safeguards under which CMS will disclose to SSA Medicare non-utilization information for Social Security Title II beneficiaries aged 90 and above.

CMS will identify Medicare enrollees whose records have been inactive for three or more years. SSA will use this data as an indicator to select and prioritize cases for review to determine continued eligibility for benefits under Title II of the Act. SSA will contact these individuals to verify ongoing eligibility. In addition, SSA will use this data for the purposes of fraud discovery and the analysis of fraud program operations; this agreement allows for SSA's OAFP to evaluate the data for purposes of fraud detection. SSA will refer individual cases of suspected fraud, waste, or abuse to OIG for investigation.

Categories of Individuals

The individuals whose information is involved in this matching program are Social Security Title II beneficiaries aged 90 and above.

Categories of Records

SSA will provide CMS with a finder file containing the following information for each individual: (a) Title II Claim Account Number (CAN); (b) Title II Beneficiary Identification Code (BIC); (c) First Name, (d) Last Name, and (e) Date of birth.

CMS will provide SSA with a response file containing the following information for each individual: (a) CMS File Number (identified as a Health Insurance Claim Number (HICN) or Medicare Beneficiary Identifier (MBI)); (b) Whether CMS matched Beneficiary or individual is a Medicare beneficiary; (c) Whether individual is a Medicaid recipient, (d) Whether Medicare was used in the last 3 years; (e) Whether the beneficiary is a part of an HMO; (f) Whether the beneficiary lives in a nursing home; (g) Whether the beneficiary has private health insurance; (h) Whether the beneficiary has veteran's health insurance; or (i) Whether the beneficiary has Tricare insurance.

System(s) of Records

SSA will disclose to CMS information from the Master Beneficiary Record (MBR) (60–0090), last fully published January 11, 2006 (71 FR 1826), amended on December 10, 2007 (72 FR 69723), July 5, 2013 (78 FR 40542), July 3, 2018 (83 FR 31250–31251), and November 1, 2018 (83 FR 54969).

SSA will retain any information from the CMS response file in the Anti-Fraud Enterprise Solution (AFES) System of Records for OAFP fraud-related analytics, or data that leads to OAFP to initiate a fraud investigation (60–0388) published May 3, 2018 (83 FR 19588).

CMS will disclose to SSA information from the following Systems of Record (SORs): (a) National Claims History (NCH) (09–70–0558), published November 20, 2006 (71 FR 67137); (b) Enrollment Data Base (EDB) (09–70–0502), published February 26, 2008 at 73 FR 10249; and (c) The Long Term Care—Minimum Data Set (MDS) (90–70–0528), published March 19, 2007 at 72 FR 12801.

SSA's and CMS's SORs have routine uses permitting the disclosures needed to conduct this match.

[FR Doc. 2022–14096 Filed 6–30–22; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0054]

Finding Regarding Foreign Social Insurance or Pension System of Mongolia

AGENCY: Social Security Administration.

ACTION: Notice of finding regarding foreign social insurance or pension system of Mongolia.

SUMMARY: We find that, under the Alien Nonpayment Provision of the Social Security Act (Act), as amended, citizens of Mongolia may not continue to receive Social Security benefits under title II after 6 consecutive calendar months of absence from the United States, unless they meet an exception not related to citizenship of Mongolia. This finding is based on law, information, and data we received about the social insurance system of Mongolia. The Commissioner of Social Security delegated the authority to make this finding to the Deputy Commissioner for Retirement and Disability Policy.

DATES: We will implement this finding on July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Icie K. Allen, Office of Income Security Programs, 2500 Robert Ball Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–8945.

SUPPLEMENTARY INFORMATION: We are prohibited by law from paying benefits under title II of the Act to non-U.S. citizens who remain outside the United States for more than six consecutive calendar months, unless they meet an exception provided in the law. We refer to this portion of the law as the Alien Nonpayment Provision (ANP).[1]

We recently reviewed the Mongolian social insurance system to determine if it meets the criteria for an ANP exception. This is our first finding about the social insurance system of Mongolia under the ANP. As a result of this finding, citizens of Mongolia will still be required to meet an exception unrelated to citizenship in order to continue receiving benefits under title II of the Act after six consecutive calendar months outside the United States.

Background: The ANP, section 202(t) of the Act, prohibits payment of title II benefits to individuals who are not U.S. citizens or nationals for any month after they have been outside the United States for more than six consecutive calendar months. Beneficiaries who meet one of the exceptions described in the ANP may continue to receive benefits under title II without regard to absence from the United States. Some of these exceptions require that dependents and survivors meet a 5-year U.S. residency requirement for benefits to continue after six consecutive calendar months of absence from the United States.[2]

To determine whether the social insurance or pension system meets the criteria for an exception under section 202(t) of the Act, we review the foreign country's laws. In addition, we review information and data that we receive from the administrators of the social insurance or pension system of that country. The Commissioner of the Social Security Administration publishes these findings in the **Federal Register**.

[1] Section 202(t) of the Act, 42 U.S.C. 402(t).

[2] Section 202(t)(2), (4), (11) of the Act, 42 U.S.C. 402(t)(2), (4), (11).

In September 2018, we received a completed SSA–142 *Report of Social Insurance or Pension System,* submitted by the Ministry of Labour and Social Protection of Mongolia.

We conducted a thorough review to reach the finding we describe here.

Section 202(t)(2) Exception

Section 202(t)(2) of the Act provides that the prohibition of payment shall not apply to individuals who are citizens of a foreign country that the Commissioner of Social Security finds has a social insurance or pension system that is in effect and of general application in such country, and that:

(A) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(B) permits individuals who are U.S. citizens but not citizens of that country and who qualify for benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

We find that Mongolia does not meet all of the required criteria of section 202(t)(2) of the Act because, although it has a social insurance system that is in effect, is of general application, and meets the conditions in subparagraph (A), the social insurance system does not meet the conditions in subparagraph (B).

Section 202(t)(4) Exception

The ANP exceptions provided in section 202(t)(4) subparagraphs (A) and (B) shall not apply to a citizen of a foreign country that has a social insurance or pension system in effect and of general application, which satisfies section 202(t)(2)(A), but not section 202(t)(2)(B).

Therefore, the ANP exceptions in section 202(t)(4)(A) and (B) do not apply to citizens of Mongolia due to the above finding under section 202(t)(2).

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2022–14098 Filed 6–30–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11773]

Memorandum of Agreement Between the U.S. Department of State Bureau of Consular Affairs and Intercountry Adoption Accreditation and Maintenance Entity, Inc

ACTION: Notice.

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention), the Intercountry Adoption Act of 2000 (IAA), and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). Among other things, the IAA and UAA give the Secretary of State responsibility, by entering into agreements with one or more qualified entities and designating such entities as accrediting entities, for the accreditation of agencies and approval of persons to provide adoption services in intercountry adoptions. This notice is to inform the public that on June 2, 2022, the Department entered into a renewed agreement with Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME), designating IAAME as an accrediting entity (AE) for five years.

The text of the Memorandum of Agreement is included in its entirety at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Marisa Light (202) 485–6024, *Adoption@state.gov.* Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) state adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that state. Both nonprofit accrediting entities and state accrediting entities must meet any other criteria that the Department may by regulation establish. IAAME is a nonprofit private entity with expertise in developing and administering standards for entities providing child welfare services.

The final rule on accreditation of agencies and approval of persons (22 CFR part 96) was originally published in the **Federal Register** (71 FR 8064–8066, February 15, 2006) and became effective on March 17, 2006. The final rule establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated accrediting entities will follow in accrediting or approving adoption service providers. Under the UAA, adoption service providers working with prospective adoptive parents in non-Convention adoption cases need to comply with the same accreditation requirement and standards that apply in Convention adoption cases.

Angela M Kerwin,

Deputy Assistant Secretary for Overseas Citizens Services, Bureau of Consular Affairs (CA/OCS), U.S. Department of State.

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF STATE BUREAU OF CONSULAR AFFAIRS AND INTERCOUNTRY ADOPTION ACCREDITATION AND MAINTENANCE ENTITY, INC.

Parties & Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department), and Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME), with its principal office located at 5950 NW 1st Place, Suite 300, Gainesville, FL 32607, hereinafter the ''Parties,'' are entering into this agreement for the purpose of designating Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME) as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279, and 22 CFR part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR part 96, and Delegation of Authority 261. IAAME has full authority to enter into this MOA under the authorization of IAAME's Board of Directors.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2.

The Parties AGREE AS FOLLOWS:

Article 1

Designation of the Accrediting Entity

The Department hereby designates IAAME as an accrediting entity and thereby authorizes it to accredit agencies and approve persons to provide adoption services in intercountry adoption cases, in accordance with the procedures and standards set forth in 22 CFR part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7(a).

Article 2

Responsibilities of the Accrediting Entity

(1) IAAME agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), Public Law 112–276, Part 96 of 22 CFR, and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, IAAME will operate consistent with Department of State policies and written directives regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity under the IAA, UAA, and any other applicable regulations.

(2) IAAME agrees to perform such functions described in paragraph (1) over adoption service providers whose primary office is within its geographical jurisdiction, as assigned by the Department. Jurisdiction will be assigned on the basis of the primary office:

a. As reported by the adoption service provider to the accrediting entity for inclusion in the public adoption service provider directory as of the date this agreement is signed by both parties; or

b. In the case of adoption service providers not accredited or approved as of the date this agreement is signed by both parties, the primary office indicated in the initial application for accreditation or approval.

Any change of primary office or identification of other primary office by an adoption service provider after the date of signature of this agreement will not affect the assignment of jurisdiction.

(3) IAAME will develop and utilize a Department-approved transition plan to accommodate any necessary transfer of work and records between designated AEs operating in jurisdictions not assigned to IAAME.

(4) IAAME will take appropriate staffing, funding, and other measures to allow it to carry out all required accrediting entity functions and responsibilities, and will use the Adoptions Tracking System and the Complaint Registry (ATS/CR) as directed by the Department, including by updating required data fields in a timely fashion. IAAME is permitted to additionally use an independent data collection system of its choice consistent with 22 CFR 96.7(a)(7) and with Department authorization, provided that the use of independent data collection system does not adversely affect IAAME's submission of the required data to the Department using ATS and ATS/CR.

(5) In carrying out its accrediting entity functions, IAAME will:

(a) make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR part 96 and using only the standards in subpart F of 22 CFR part 96 and the substantial compliance weighting system approved by the Department pursuant to paragraph 4, Article 3 below;

(b) charge applicants for accreditation or approval only fees approved by the Department pursuant to paragraph 3, Article 3 below;

(c) review complaints, including complaints regarding conduct alleged to have occurred outside the United States, in accordance with subpart J of 22 CFR part 96 and additional procedures approved by the Department pursuant to paragraphs 2 (c) and 2 (d) in Article 3, below. IAAME will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred outside the United States, which may, when appropriate, include referring a complaint or other information relating to possible civil or criminal violation of IAA section 404 or other possible criminal activity to the Department and/or other appropriate law enforcement authorities for potential investigation;

(d) take adverse actions against accredited agencies and approved persons in accordance with subpart K of 22 CFR part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate enforcement action;

(e) assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;

(f) refer an adoption service provider to the Department for debarment if it concludes after review that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;

(g) promptly report changes in the accreditation or approval status of an adoption service provider to the Department and the relevant state licensing authority;

(h) maintain and use only the procedures approved by the Department and those procedures presented to the Department pursuant to Article 3 of this agreement whenever they apply;

(i) consult with the Department, when needed, to solicit greater clarity regarding the meaning of relevant laws and regulations; and

(j) at the Department's request, share information with the Department to assist the Department in carrying out its responsibilities.

Article 3

Training, Procedures, and Fees

(1) *Accreditation Materials and Training:* In coordination with the Department and any other designated accrediting entities, IAAME will:

(a) maintain forms, training materials, and evaluation practices;

(b) conduct or assist in conducting or participate in any training sessions;

(c) develop and maintain resources to assist applicants for accreditation and approval in understanding the accreditation and approval process and the steps needed to demonstrate the agency or person has achieved substantial compliance with the applicable standards.

(2) *Procedures:* IAAME will maintain procedures approved by the Department and update these, subject to the Department's approval, as needed:

(a) to evaluate whether a candidate for accreditation meets the applicable eligibility requirements set forth in 22 CFR part 96;

(b) to carry out its monitoring duties;

(c) to review complaints referred to it through the Complaint Registry or act on information received directly from the Department;

(d) to review complaints that it receives about its own actions as an accrediting entity for adoption service providers;

(e) to make public the disclosures required by 22 CFR 96.91;

(f) to ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals, and accommodations, which charges shall be in addition to the fees charged under 22 CFR 96.8; and

(g) to implement and terminate adverse actions.

(3) *Fee Schedule:*

(a) IAAME will maintain a fee schedule for accreditation and approval services that meets the requirements of 22 CFR 96, and update these, subject to approval by the Department. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A–25 paragraph 6(d)(1), of accreditation and approval services. IAAME will maintain a fee schedule developed using this methodology together with comprehensive documentation, and will provide justification of the proposed fees to the Department for the Department's approval.

(b) The approved fee schedule can be amended with the approval of the Department.

(4) *Substantial Compliance Weighting Systems:*

(a) IAAME will maintain and update a substantial compliance weighting system as described in 22 CFR 96 and as approved by the Department.

(b) In maintaining the systems described in paragraph (a) of this section, IAAME will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4

Data Collection, Reporting and Records

(1) *Adoptions Tracking System/Complaint Registry (ATS/CR):*

(a) IAAME will maintain and fund a computer and internet connection for use with the ATS/CR that meets system requirements set by the Department;

(b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/CR and facilitate any necessary training for use of the ATS/CR.

(2) *Annual Report:* IAAME will report on dates agreed upon by the Parties, in a mutually agreed upon format, the information required in 22 CFR 96.93 as provided in that section through ATS/CR.

(3) *Additional Reporting:* IAAME will provide any additional status reports or data as required by the Department, and in a mutually agreed upon format.

(4) *Accrediting Entity Records:* IAAME will retain all records related to its accreditation functions and responsibilities in printed or electronic form in accordance with the electronic recordkeeping policy that applies to Federal acquisition contracts under Federal Acquisition Regulation 4.703 for a minimum of 3 years after the termination of IAAME's designation as an accrediting entity, or until any litigation, claim, or audit related to the records filed or noticed within its period of designation is finally terminated, whichever is later. IAAME will be responsible for providing access to and transferring records necessary for another accrediting entity to perform its responsibilities and exercise jurisdiction over adoption service providers previously under the jurisdiction of IAAME.

Article 5

Department Oversight and Monitoring

(1) *To facilitate oversight and monitoring by the Department, IAAME will:*

(a) provide copies of its forms and other materials to the Department and give Department personnel the opportunity to observe any training sessions;

(b) allow the Department to inspect all records relating to its accreditation functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;

(c) submit to the Department by a date agreed upon by the Parties an annual declaration signed by the President and Chief Executive Officer confirming that IAAME is complying with the IAA, UAA, 22 CFR part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;

(d) make appropriate senior-level officers available to attend any meetings with the Department upon request;

(e) immediately report to the Department events that have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, legal or disciplinary actions against the organization, and conflicts of interest;

(f) notify the Department of any requests for information relating to its role as an accrediting entity under the IAA and UAA or Department functions or responsibilities that it receives from Central Authorities of other countries that are party to the Convention, or any other competent authority (except for routine requests concerning accreditation, or approval status or other information publicly available under subpart M of Part 96), and consult with the Department before releasing such information;

(g) consult immediately with the Department about any issue or event that may affect compliance with the IAA, UAA, or U.S. compliance with obligations under the Convention.

(2) *Departmental Approval Procedures:* In all instances in which the Department must approve a policy, system, fee schedule, or procedure before IAAME can bring it into effect or amend it, IAAME will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department via email. Formal approval by the Department will be conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

(3) *Suspension or Cancellation:* When the Department is considering suspension or cancellation of IAAME's designation:

(a) the Department will notify IAAME in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;

(b) IAAME will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unwarranted within 10 business days or by another date mutually agreed upon by the Department and IAAME;

(c) upon request, the Department also will meet with the accrediting entity virtually or in person;

d) if the Department, in its sole discretion, is not satisfied with the actions or explanation of IAAME, it will notify IAAME in writing of its decision to suspend or cancel IAAME's designation and this agreement;

(e) IAAME will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits or approves to another accrediting entity, including by transferring fees collected by IAAME for services not yet performed.

(4) IAAME will follow its Department-approved procedures for reviewing complaints against IAAME received by

the Department or referred to the Department because the complainant was not satisfied with IAAME's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 6

Other Issues Agreed By the Parties

(1) *Conflict of Interest Provisions:*

(a) IAAME shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers. IAAME shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

(b) IAAME shall identify for the Department all members of its board of directors or other governing body, employees, attorneys, and consultants who have a professional or personal affiliation with any adoption service providers, or of membership organizations who have adoption service providers as members, or who represent adoption service providers, or who provide legal advice or services in intercountry adoption. IAAME shall demonstrate it has procedures in place to ensure that any such relationships will not influence any accreditation or approval decisions, and shall maintain and use these procedures.

(c) IAAME shall disclose to the Department any other situation or circumstance that may create the appearance of a conflict of interest.

(2) *Liability:* IAAME agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, including by maintaining liability insurance for its actions as an accrediting entity brought by agencies and/or persons seeking to be accredited or approved or who are accredited or approved, and to inform the Department immediately of any events that may affect its ability to defend itself (*e.g.,* change in or loss of insurance coverage, change in relevant state law). IAAME agrees that it will consult with the Department immediately if it becomes aware of any other legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

(3) *Privacy and Data Protection:* IAAME agrees to take appropriate steps to ensure that all documents and information it receives about adoption service providers are safeguarded against unauthorized disclosure consistent with 22 CFR 96.26 (a). IAAME shall maintain internal policies and procedures designed to ensure the integrity and security of the data collected, handled, or stored in connection with its functions as an accrediting entity. IAAME agrees not to share or disclose any non-public information, including Department of State visa records protected under section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)), shared with it by the Department, without prior authorization from the Department. IAAME agrees to promptly notify the Department in any cases where it knows or believes that an unauthorized disclosure has taken place.

Article 7

Liaison Between the Department and the Accrediting Entity

(1) IAAME's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Executive Director, or his or her designate. The Department's principal point of contact for communication is the Chief of the Adoptions Oversight Division, or his or her designate.

(2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 1.

(3) IAAME acknowledges that information shared with the Department is subject to disclosure as required by U.S. law and regulations, to the extent that such information appears within an agency record as defined by 5 U.S.C. 552, *et seq,* is subject to the Freedom of Information Act (FOIA). IAAME may not withhold required information from the Department for the purpose of avoiding potential public disclosure pursuant to FOIA.

Article 8

Certifications and Assurances

(1) IAAME certifies that it will comply with all requirements of applicable State and Federal law.

Article 9

Agreement, Scope, and Period of Performance

(1) *Scope:*

(a) This agreement is not intended to have any effect on any activities of IAAME that are not related to its functions as an accrediting entity for adoption service providers providing adoption services in intercountry adoptions.

(b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds.

(c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.

(d) Nothing in this agreement shall release IAAME from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, UAA, 22 CFR part 96, or any other applicable laws or regulations.

(2) *Continuation of responsibilities:* IAAME's responsibilities under this agreement will continue subject to determination by the Department of jurisdictional boundaries between IAAME and any other designated accrediting entity.

(3) *Duration:* IAAME's designation as an accrediting entity and this agreement shall remain in effect for five years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of IAAME. The Parties may agree mutually in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(4) *Changed Circumstances:* If unforeseen circumstances arise that will render IAAME unable to continue to perform its duties as an Accrediting Entity, IAAME will immediately inform the Department of State. The Parties will consult and make reasonable efforts to find a solution that will enable IAAME to continue to perform until the end of the contract period. If no such solution can be reached, the contract may be terminated on a mutually agreed date or, if mutual agreement cannot be reached, on not less than 14 months written notice from IAAME.

(5) *Severability:* To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the UAA, the regulations implementing the IAA and UAA, or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.

(6) *Entirety of Agreement:* This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Dated: May 27, 2022,

Rena Bitter,

Assistant Secretary for Consular Affairs, U.S. Department of State

Dated: June 2, 2022,

Stephen Pennypacker,

President and Chief Executive Officer Intercountry Adoption Accreditation and Maintenance, Inc.

[FR Doc. 2022–14104 Filed 6–30–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11772]

Memorandum of Agreement Between the U.S. Department of State Bureau of Consular Affairs and Center for Excellence in Adoption Services

ACTION: Notice.

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention), the Intercountry Adoption Act of 2000 (IAA), and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). Among other things, the IAA and UAA give the Secretary of State responsibility, by entering into agreements with one or more qualified entities and designating such entities as accrediting entities, for the accreditation of agencies and approval of persons to provide adoption services in intercountry adoptions. This notice is to inform the public that on June 2, 2022, the Department entered into an agreement with Center for Excellence in Adoption Services (CEAS), designating CEAS as an accrediting entity (AE) for five years.

The text of the Memorandum of Agreement is included in its entirety at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Marisa Light (202) 485–6024, *Adoption@state.gov.* Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) state adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that state. Both nonprofit accrediting entities and state accrediting entities must meet any other criteria that the Department may by regulation establish. IAAME is a nonprofit private entity with expertise in developing and administering standards for entities providing child welfare services.

The final rule on accreditation of agencies and approval of persons (22 CFR part 96) was originally published in the **Federal Register** (71 FR 8064–8066, February 15, 2006) and became effective on March 17, 2006. The final rule establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated accrediting entities will follow in accrediting or approving adoption service providers. Under the UAA, adoption service providers working with prospective adoptive parents in non-Convention adoption cases need to comply with the same accreditation requirement and standards that apply in Convention adoption cases.

Angela M Kerwin,

Deputy Assistant Secretary for Overseas Citizens Services, Bureau of Consular Affairs (CA/OCS), U.S. Department of State.

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF STATE BUREAU OF CONSULAR AFFAIRS AND CENTER FOR EXCELLENCE IN ADOPTION SERVICES

Parties & Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department), and Center for Excellence in Adoption Services (CEAS), with its principal office located at 800 Westchester Avenue, Suite 641 North, Rye Brook NY 10573, hereinafter the ''Parties,'' are entering into this agreement for the purpose of designating Center for Excellence in Adoption Services (CEAS) as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279, and 22 CFR part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR part 96, and Delegation of Authority 261. CEAS has full authority to enter into this MOA under the authorization of CEAS's Board of Directors.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2.

The Parties AGREE AS FOLLOWS:

Article 1

Designation of the Accrediting Entity

The Department hereby designates CEAS as an accrediting entity and thereby authorizes it to accredit agencies and approve persons to provide adoption services in intercountry adoption cases, in accordance with the procedures and standards set forth in 22 CFR part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7(a).

Article 2

Responsibilities of the Accrediting Entity

(1) CEAS agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), Public Law 112–276, Part 96 of 22 CFR, and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, CEAS will operate consistent with Department of State policies and written directives regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity under the IAA, UAA, and any other applicable regulations.

(2) CEAS agrees to perform such functions described in paragraph (1) over adoption service providers whose primary office is within its geographical jurisdiction, as assigned by the Department. Jurisdiction will be assigned on the basis of the primary office:

a. As reported by the adoption service provider to the accrediting entity for inclusion in the public adoption service provider directory as of the date this agreement is signed by both parties; or

b. In the case of adoption service providers not accredited or approved as of the date this agreement is signed by both parties, the primary office indicated in the initial application for accreditation or approval.

Any change of primary office or identification of other primary office by an adoption service provider after the date of signature of this agreement will not affect the assignment of jurisdiction.

(3) CEAS will develop and utilize a Department-approved transition plan to accommodate any necessary transfer of work and records between designated AEs operating in jurisdictions not assigned to CEAS.

(4) CEAS will take appropriate staffing, funding, and other measures to allow it to carry out all required accrediting entity functions and responsibilities, and will use the Adoptions Tracking System and the Complaint Registry (ATS/CR) as directed by the Department, including by updating required data fields in a timely fashion. CEAS is permitted to additionally use an independent data collection system of its choice consistent with 22 CFR 96.7(a)(7) and with Department authorization, provided that the use of independent data collection system does not adversely affect CEAS's submission of the required data to the Department using ATS and ATS/CR.

(5) In carrying out its accrediting entity functions, CEAS will:

(a) make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR part 96 and using only the standards in subpart F of 22 CFR part 96 and the substantial compliance weighting system approved by the Department pursuant to paragraph 4, Article 3 below;

(b) charge applicants for accreditation or approval only fees approved by the Department pursuant to paragraph 3, Article 3 below;

(c) review complaints, including complaints regarding conduct alleged to have occurred outside the United States, in accordance with subpart J of 22 CFR part 96 and additional procedures approved by the Department pursuant to paragraphs 2 (c) and 2 (d) in Article 3, below. CEAS will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred outside the United States, which may, when appropriate, include referring a complaint or other information relating to possible civil or criminal violation of IAA section 404 or other possible criminal activity to the Department and/or other appropriate law enforcement authorities for potential investigation;

(d) take adverse actions against accredited agencies and approved persons in accordance with subpart K of 22 CFR part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate enforcement action;

(e) assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;

(f) refer an adoption service provider to the Department for debarment if it concludes after review that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;

(g) promptly report changes in the accreditation or approval status of an adoption service provider to the Department and the relevant state licensing authority;

(h) maintain and use only the procedures approved by the Department and those procedures presented to the Department pursuant to Article 3 of this agreement whenever they apply;

(i) consult with the Department, when needed, to solicit greater clarity regarding the meaning of relevant laws and regulations; and

(j) at the Department's request, share information with the Department to assist the Department in carrying out its responsibilities.

Article 3

Training, Procedures, and Fees

(1) *Accreditation Materials and Training:* In coordination with the Department and any other designated accrediting entities, CEAS will:

(a) maintain forms, training materials, and evaluation practices;

(b) conduct or assist in conducting or participate in any training sessions;

(c) develop and maintain resources to assist applicants for accreditation and approval in understanding the accreditation and approval process and the steps needed to demonstrate the agency or person has achieved substantial compliance with the applicable standards.

(2) *Procedures:* CEAS will maintain procedures approved by the Department and update these, subject to the Department's approval, as needed:

(a) to evaluate whether a candidate for accreditation meets the applicable eligibility requirements set forth in 22 CFR part 96;

(b) to carry out its monitoring duties;

(c) to review complaints referred to it through the Complaint Registry or act on information received directly from the Department;

(d) to review complaints that it receives about its own actions as an accrediting entity for adoption service providers;

(e) to make public the disclosures required by 22 CFR 96.91;

(f) to ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals, and accommodations, which charges shall be in addition to the fees charged under 22 CFR 96.8; and

(g) to implement and terminate adverse actions.

(3) *Fee Schedule:*

(a) CEAS will maintain a fee schedule for accreditation and approval services that meets the requirements of 22 CFR 96, and update these, subject to approval by the Department. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A–25 paragraph 6(d)(1), of accreditation and approval services. CEAS will maintain a fee schedule developed using this methodology together with comprehensive documentation, and will provide justification of the proposed fees to the Department for the Department's approval.

(b) The approved fee schedule can be amended with the approval of the Department.

(4) *Substantial Compliance Weighting Systems:*

(a) CEAS will maintain and update a substantial compliance weighting system as described in 22 CFR 96 and as approved by the Department.

(b) In maintaining the systems described in paragraph (a) of this section, CEAS will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4

Data Collection, Reporting and Records

(1) *Adoptions Tracking System/ Complaint Registry (ATS/CR):*

(a) CEAS will maintain and fund a computer and internet connection for use with the ATS/CR that meets system requirements set by the Department;

(b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/CR and facilitate any necessary training for use of the ATS/CR.

(2) *Annual Report:* CEAS will report on dates agreed upon by the Parties, in a mutually agreed upon format, the information required in 22 CFR 96.93 as provided in that section through ATS/CR.

(3) *Additional Reporting:* CEAS will provide any additional status reports or data as required by the Department, and in a mutually agreed upon format.

(4) *Accrediting Entity Records:* CEAS will retain all records related to its accreditation functions and responsibilities in printed or electronic form in accordance with the electronic recordkeeping policy that applies to Federal acquisition contracts under Federal Acquisition Regulation 4.703 for a minimum of 3 years after the termination of CEAS's designation as an accrediting entity, or until any litigation, claim, or audit related to the records filed or noticed within its period of designation is finally terminated, whichever is later. CEAS will be responsible for providing access to and transferring records necessary for another accrediting entity to perform its responsibilities and exercise jurisdiction over adoption service providers previously under the jurisdiction of CEAS.

Article 5

Department Oversight and Monitoring

(1) *To facilitate oversight and monitoring by the Department, CEAS will:*

(a) provide copies of its forms and other materials to the Department and give Department personnel the opportunity to observe any training sessions;

(b) allow the Department to inspect all records relating to its accreditation functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;

(c) submit to the Department by a date agreed upon by the Parties an annual declaration signed by the President and Chief Executive Officer confirming that CEAS is complying with the IAA, UAA, 22 CFR part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;

(d) make appropriate senior-level officers available to attend any meetings with the Department upon request;

(e) immediately report to the Department events that have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, legal or disciplinary actions against the organization, and conflicts of interest;

(f) notify the Department of any requests for information relating to its role as an accrediting entity under the IAA and UAA or Department functions or responsibilities that it receives from Central Authorities of other countries that are party to the Convention, or any other competent authority (except for routine requests concerning accreditation, or approval status or other information publicly available under subpart M of Part 96), and consult with the Department before releasing such information;

(g) consult immediately with the Department about any issue or event that may affect compliance with the IAA, UAA, or U.S. compliance with obligations under the Convention.

(2) *Departmental Approval Procedures:* In all instances in which the Department must approve a policy, system, fee schedule, or procedure before CEAS can bring it into effect or amend it, CEAS will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department via email. Formal approval by the Department will be conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

(3) *Suspension or Cancellation:* When the Department is considering suspension or cancellation of CEAS's designation:

(a) the Department will notify CEAS in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;

(b) CEAS will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unwarranted within 10 business days or by another date mutually agreed upon by the Department and CEAS;

(c) upon request, the Department also will meet with the accrediting entity virtually or in person;

(d) if the Department, in its sole discretion, is not satisfied with the actions or explanation of CEAS, it will notify CEAS in writing of its decision to suspend or cancel CEAS's designation and this agreement;

(e) CEAS will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits or approves to another accrediting entity, including by transferring fees collected by CEAS for services not yet performed.

(4) CEAS will follow its Department-approved procedures for reviewing complaints against CEAS received by the Department or referred to the Department because the complainant was not satisfied with CEAS's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 6

Other Issues Agreed by the Parties

(1) *Conflict of Interest Provisions:*

(a) CEAS shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers. CEAS shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

(b) CEAS shall identify for the Department all members of its board of directors or other governing body, employees, attorneys, and consultants who have a professional or personal affiliation with any adoption service providers, or of membership organizations who have adoption service providers as members, or who represent adoption service providers, or who provide legal advice or services in intercountry adoption. CEAS shall demonstrate it has procedures in place to ensure that any such relationships will not influence any accreditation or approval decisions, and shall maintain and use these procedures.

(c) CEAS shall disclose to the Department any other situation or circumstance that may create the appearance of a conflict of interest.

(2) *Liability:* CEAS agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, including by maintaining liability insurance for its actions as an

accrediting entity brought by agencies and/or persons seeking to be accredited or approved or who are accredited or approved, and to inform the Department immediately of any events that may affect its ability to defend itself (*e.g.,* change in or loss of insurance coverage, change in relevant state law). CEAS agrees that it will consult with the Department immediately if it becomes aware of any other legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

(3) *Privacy and Data Protection:* CEAS agrees to take appropriate steps to ensure that all documents and information it receives about adoption service providers are safeguarded against unauthorized disclosure consistent with 22 CFR 96.26 (a). CEAS shall maintain internal policies and procedures designed to ensure the integrity and security of the data collected, handled, or stored in connection with its functions as an accrediting entity. CEAS agrees not to share or disclose any non-public information, including Department of State visa records protected under section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)), shared with it by the Department, without prior authorization from the Department. CEAS agrees to promptly notify the Department in any cases where it knows or believes that an unauthorized disclosure has taken place.

Article 7

Liaison Between the Department and the Accrediting Entity

(1) CEAS's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Executive Director, or his or her designate. The Department's principal point of contact for communication is the Chief of the Adoptions Oversight Division, or his or her designate.

(2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 1.

(3) CEAS acknowledges that information shared with the Department is subject to disclosure as required by U.S. law and regulations, to the extent that such information appears within an agency record as defined by 5 U.S.C. 552, *et seq,* is subject to the Freedom of Information Act (FOIA). CEAS may not withhold required information from the Department for the purpose of avoiding potential public disclosure pursuant to FOIA.

Article 8

Certifications and Assurances

(1) CEAS certifies that it will comply with all requirements of applicable State and Federal law.

Article 9

Agreement, Scope, and Period of Performance

(1) *Scope:*

(a) This agreement is not intended to have any effect on any activities of CEAS that are not related to its functions as an accrediting entity for adoption service providers providing adoption services in intercountry adoptions.

(b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds.

(c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.

(d) Nothing in this agreement shall release CEAS from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, UAA, 22 CFR part 96, or any other applicable laws or regulations.

(2) *Commencement of responsibilities:* CEAS's responsibilities under this agreement will commence upon approval by the Department of systems, procedures, and a fee schedule that, if applicable, are coordinated between CEAS and any other designated accrediting entity to ensure general consistency in accreditation systems and procedures, and general parity of fees. CEAS's responsibilities are subject to determination by the Department of jurisdictional boundaries between CEAS and any other designated accrediting entity.

(3) *Duration:* CEAS's designation as an accrediting entity and this agreement shall remain in effect for five years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of CEAS. The Parties may agree mutually in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(4) *Changed Circumstances:* If unforeseen circumstances arise that will render CEAS unable to continue to perform its duties as an Accrediting Entity, CEAS will immediately inform the Department of State. The Parties will consult and make reasonable efforts to find a solution that will enable CEAS to continue to perform until the end of the contract period. If no such solution can be reached, the contract may be terminated on a mutually agreed date or, if mutual agreement cannot be reached, on not less than 14 months written notice from CEAS.

(5) *Severability:* To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the UAA, the regulations implementing the IAA and UAA, or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.

(6) *Entirety of Agreement:* This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Dated: May 27, 2022.

Rena Bitter,

Assistant Secretary for Consular Affairs, U.S. Department of State.

Dated: June 2, 2022.

Jayne Schmidt,

Executive Director, Center for Excellence in Adoption Services.

[FR Doc. 2022–14106 Filed 6–30–22; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Mark L. Burton (WB22–33–6/22/22) for permission to use data from the Board's 2019 Unmasked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB22–33.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14

calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–14112 Filed 6–30–22; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

North Alabama Utility-Scale Solar Facility Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has decided to adopt the preferred alternative identified in its final environmental impact statement (Final EIS) for the North Alabama Utility-Scale Solar Facility. The Final EIS was made available to the public on May 9, 2022. A Notice of Availability (NOA) of the Final EIS was published in the **Federal Register** on May 13, 2022. TVA's preferred alternative, analyzed in the Final EIS as the Proposed Action Alternative, consists of TVA constructing an approximately 200-megawatt (MW) alternating current (AC) solar photovoltaic (PV) facility, including an electrical substation and possibly a battery energy storage system (BESS), on an approximately 1,459-acre portion of a 2,896-acre Project Site currently owned by TVA, two miles east of Courtland in Lawrence County, Alabama. In addition, up to 150 acres on the Project Site would be maintained as species-rich native plant meadow. The Project would connect to the existing adjacent Reservation–Mountain Home 161-kilovolt (kV) transmission line (TL), which crosses the southern portion of the Project Site. The interconnection of the solar PV facility would require network upgrades on this TL in Lawrence County. This alternative would achieve the purpose and need of the Project to meet the demand for increased renewable energy generation and partially fulfill the renewable energy goals established in TVA's 2019 Integrated Resource Plan (IRP).

ADDRESSES: To access and review the Final EIS, this Record of Decision (ROD), and other project documents, go to TVA's website at *https://www.tva.gov/nepa.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Smith, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902, 865–632–3053, *esmith14@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 through 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA is a federal agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic well-being of the residents of the Tennessee Valley region. As part of its diversified energy strategy, TVA produces or obtains electricity from a diverse portfolio of energy sources, including solar, hydroelectric, wind, biomass, fossil fuel, and nuclear. In June 2019, TVA completed its 2019 IRP and associated EIS. The 2019 IRP, which updated the 2015 IRP, identified the various resources that TVA intends to use to meet the energy needs of the TVA region over a 20-year planning period, while achieving TVA's objectives to deliver reliable, low-cost, and cleaner energy with fewer environmental impacts. The 2019 IRP recommends the expansion of solar generating capacity of up to 14,000 MW by 2038.

TVA entered into a two-year Purchase Option Agreement in October 2019 for the Project Site and purchased the property before expiration of the agreement in October 2021 to preserve the option of the Proposed Action Alternative in the ongoing environmental review. Since the property once acquired could be readily sold, TVA considers this land purchase to be an action that is reversible in the future. TVA would not initiate Project-related actions on the Project Site unless the Proposed Action is selected with the issuance of the ROD. TVA would either maintain the Project Site through periodic mowing or enter into lease agreement(s) with local farmer(s) to continue agricultural operations.

TVA has prepared an EIS pursuant to NEPA to assess the environmental impacts of the Proposed Action to construct an approximately 200-MW AC solar PV facility, including an electrical substation and possibly a BESS, on an approximately 1,459-acre portion of the TVA-owned Project Site, and the interconnection of the solar PV facility to the existing Reservation–Mountain Home 161-kV TL and associated network upgrades.

Alternatives Considered: TVA considered two alternatives in the Draft EIS and Final EIS.

No Action Alternative. Under the No Action Alternative, TVA would not develop the North Alabama Utility-Scale Solar Facility at the Project Site and would pursue other actions to meet its renewable energy goals established in the 2019 IRP. TVA would retain ownership of the site until decisions on its future development and/or disposal, assessed in subsequent NEPA reviews, are made. Until that point, TVA would conduct necessary site maintenance, such as periodic inspections and mowing of parts of the site. TVA may also enter into lease agreement(s) with local farmer(s) for continued agricultural operations. TVA may implement environmental enhancement measures by establishing and maintaining the proposed species-rich native plant meadow and/or by expanding the suitable habitat for the state-listed Tuscumbia darter and the globally rare round-rib elimia, wherein TVA would thin the dense vegetative buffer along Wheeler Branch and maintain the thinned buffer. These interim activities would follow TVA's standard best management practices and permitting requirements and would align with TVA's natural resource management policies as described in its 2020 Natural Resource Plan and EIS. Agricultural lease agreements with farmers would adhere to TVA's standards listed in its Grasslands and Agricultural Lands Management License provisions.

Proposed Action Alternative. Under the Proposed Action Alternative, TVA would construct an approximately 200-MW AC solar PV facility known as the North Alabama Utility-Scale Solar Facility, including an electrical substation and possibly a 200-MW hour (MWh) BESS. The solar PV facility, BESS, and associated 161-kV Project substation would occupy approximately 1,459 acres of a 2,896-acre Project Site located along U.S. Highway 72 Alternate approximately two miles east of the town of Courtland in northeastern Lawrence County, Alabama. The solar facility and associated components would be designed to avoid and minimize impacts to environmental resources to the maximum extent possible. In addition, up to 150 acres of the Project Site would be maintained as species-rich native plant meadow. As part of the Proposed Action, TVA may also construct a 200-MWh BESS within the 1,459-acre developed portion of the Project Site, adjacent to the Project substation. TVA would develop the facility with the intent of entering into a power purchase agreement (PPA) with a qualified company to own, maintain, and operate the facility under terms of the PPA for up to a 20-year period. The PPA would include appropriate

commitments and restrictive covenants for the protection of environmental resources. At the end of the PPA term, TVA would repurchase the facility and either let the PPA expire and decommission the facility or as evaluated under separate environmental review, enter into a new PPA or choose to operate the solar facility for an additional period. The facility output would be transmitted to the TVA electrical network via an interconnection with the existing Reservation–Mountain Home 161-kV TL, which crosses the southern portion of the Project Site. The interconnection of the solar facility would require upgrades on this TL in Lawrence County.

Purpose and Need: The purpose and need of the Proposed Action is to meet the demand for increased renewable energy generation and partially fulfill the renewable energy goals established in the 2019 IRP. TVA's preferred alternative for fulfilling its purpose and need is the Proposed Action Alternative, which would generate renewable energy for TVA and its customers with only minor environmental impacts due to the implementation of best management practices (BMPs) and minimization and mitigation efforts. Implementation of the Project would help meet TVA's renewable energy goals and would help TVA meet customer-driven energy demands on the TVA system.

Environmental Impact: Overall, environmental consequences associated with the Proposed Action Alternative would not be significant and, for the most part, would be temporary with the implementation of minimization and mitigation efforts. During construction, minor, temporary increases to noise, traffic, and health and safety risks, as well as minor, temporary effects to air quality, greenhouse gas emissions, visual aesthetics, and utilities would occur. Construction and operations would have minor, localized effects on soil erosion and sedimentation and minor, direct and indirect effects to surface waters and wetlands, floodplains, and aquatic life. These impacts would be minimized or mitigated by implementation of BMPs and specific measures designed to mitigate effects, such as thinning of dense vegetive buffer along Wheeler Branks to expand suitable habitat for the the Tuscumbia darter and the globally rare round-rib elimia and establishment and maintenance of species-rich native plant meadow on up to 150 acres of the Project Site. Beneficial effects on socioeconomics would also occur with construction and operation of the Project.

Construction of the Project would result in impacts to approximately 14,891 linear feet (LF) of ephemeral streams for the installation of pilings to support the solar PV arrays and culverts for road crossings, 0.07 acre of wetland for the installation of a culvert for a road crossing and replacement of a TL pole structure, and 96 LF of intermittent and perennial stream disturbance for the installation of culverts for road crossings. Regulated linear ephemeral drainage features on site would be avoided to the extent practicable. Permanent fill in regulated features would be subject to Clean Water Act Section 404 and 401 permitting through U.S. Army Corps of Engineers and the Alabama Department of Environmental Management (ADEM), respectively. Additionally, in accordance with TVA and ADEM requirements, 50-foot buffers surrounding jurisdictional perennial and intermittent streams in developed portions of the Project Site would be maintained as an avoidance measure. The Project would change land uses on the Project Site from primarily agricultural to industrial. Long-term habitat loss would also occur as a result of this change in land use.

Approximately 84 acres of forest that potentially provide summer roosting habitat for endangered and threatened bats would be cleared during winter months, when bats are not likely to be present on the Project Site. The TL upgrade work would be carried out in a manner to avoid impacts to the endangered fleshy-fruit gladecress. TVA has consulted with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act, and USFWS concurred with TVA's determination that the Project may affect but is not likely to adversely affect the federally listed fleshy-fruit gladecress, gray bat, Indiana bat, and northern long-eared bat. TVA also determined that the Project would have no effect on 14 other federally listed species that were identified as having the potential to occur on or near the Project Site.

The Proposed Action would avoid one cemetery, all 16 archaeological sites determined to be eligible for the National Register of Historic Places (NRHP), and two potentially sensitive cultural resources areas of undetermined NRHP eligibility. The Project would have visual effects to three NRHP-listed or eligible architectural resources; however, the effects would not be adverse due to modern intrusions and/or setbacks from these resources that would be maintained by the Project. Maintenance of these setbacks would also help minimize the overall visual effects of the Proposed Action. The proposed undertaking would alter the historic characteristics that qualify the proposed rural landscape district, Wheeler Station Rural Historic District (WSRHD), for the NRHP by diminishing its integrity of design, setting, materials, workmanship, feeling, and association. TVA consulted with the Alabama Historical Commission (AHC), which functions as the Alabama state historic preservation officer, and federally recognized Indian tribes under Section 106 of the National Historic Preservation Act (NHPA) regarding these findings and avoidance, minimization, and mitigation measures. TVA and AHC developed an NHPA Section 106 memorandum of agreement (MOA) to mitigate adverse effects to WSRHD to which the Project would adhere.

Decision: TVA has decided to implement the preferred alternative of the EIS, which would result in the construction, operation, maintenance, and eventual decommissioning of the proposed solar PV facility, as well as the construction, operation, and maintenance of a substation and associated facilities to interconnect the solar PV facility to TVA's existing electrical transmission network. TVA is also considering the construction and operation of an associated 200–MWh BESS. This alternative would achieve the purpose and need of the Project.

Public Involvement: On January 30, 2020, TVA published a Notice of Intent (NOI) in the **Federal Register** announcing that it planned to prepare an EIS to address the potential environmental effects associated with building, operating, and maintaining the North Alabama Utility-Scale Solar Facility in Lawrence County, Alabama. The NOI initiated a 30-day public scoping period that concluded on March 2, 2020. The NOI solicited public input on the scope of the EIS, including alternative actions and environmental issues that should be considered in the EIS. During the public scoping period, TVA received comments from the U.S. Geological Survey, the U.S. Department of the Interior National Park Service (NPS), and six private individuals. Comments were received regarding alternatives, land use, prime farmland, water resources, biological resources, greenhouse gas emissions, cultural resources, and cumulative effects.

Draft EIS: TVA released the Draft EIS for public review in January 2021. A NOA for the Draft EIS was published in the **Federal Register** on January 29, 2021. Publication of the NOA in the **Federal Register** opened the 45-day comment period, which ended on

March 15, 2021. To solicit public input, the availability of the Draft EIS was announced in regional and local newspapers serving the project area and on TVA's social media accounts. A news release was issued to the media and posted on TVA's website. The Draft EIS was posted on TVA's website, and hard copies were made available by request. During the public comment period, on February 11, 2021, TVA held a live virtual public meeting to describe the Project and address questions in a live question-and-answer session. A recording of the session was made available following the meeting for public viewing. TVA accepted comments submitted through mail, email, a comment form on TVA's public website, and during the virtual public meeting. TVA received a total of 15 comments. These were submitted by the U.S. Environmental Protection Agency (USEPA), NPS, and 13 private individuals. Some of the comments warranted changes in the Final EIS.

Final EIS: The NOA for the Final EIS was published in the **Federal Register** on May 13, 2022. TVA received one correspondence in relation to the Final EIS. This was submitted by USEPA during the mandatory 30-day waiting period after the Final EIS was released. In its letter to TVA regarding the Final EIS, USEPA indicated that it had reviewed the Draft EIS and provided comments pertaining to endangered species and wetland impacts in a letter dated March 15, 2021. USEPA stated that the Final EIS addressed their comments.

Mitigation Measures: TVA would implement the following minimization and mitigation measures in relation to potentially affected resources and would include any of these measures that would need to be employed during operations in the terms of the PPA:

- Land Use and Visual Resources
  - Install anti-reflective PV panels to minimize or eliminate negative visual impacts from glare and reflection, and
  - Maintain existing vegetative buffer outside developed portions of the Project Site.
- Geology and Soils
  - Comply with the terms of the Construction Best Management Practices Plan (CBMPP) prepared as part of the National Pollutant Discharge Elimination System (NPDES) permitting process to control soil erosion and runoff, such as the installation of erosion control silt fences and sediment traps.
  - Implement other soil stabilization and vegetation management measures to reduce the potential for soil erosion during site operations.
  - Avoid compromising the structure integrity or altering the karst hydrology by controlled TL upgrade-related drilling and blasting within a 0.5-mile radius of documented caves.
- Water Resources
  - Comply with the terms of the CBMPP prepared as part of the General Construction Stormwater NPDES permitting process to control soil erosion and runoff, such as the installation of erosion control silt fences and sediment traps.
  - Establish 50-foot avoidance buffers surrounding perennial and intermittent streams and wetlands, where only non-mechanical tree and other woody vegetation removal would occur (except in limited areas for Tuscumbia darter and round-rib elimia conservation efforts).
  - Implement other routine BMPs as necessary, such as restricted herbicide application near streams, wetlands, caves and sinkholes, and proper vehicle maintenance to reduce the potential for adverse impacts to surface and groundwater resources.
  - To minimize adverse impacts to floodplains and their natural and beneficial values, any fence constructed within 100-year floodplain would be designed and constructed to withstand flooding with minimal damage.
  - When the facility is decommissioned and dismantled, deconstruction and demolition debris would be deposited outside 100-year floodways.
  - Road improvements crossing floodplains would be done in such a manner that upstream flood elevations would not be increased by more than 1.0 foot.
  - Avoid impacts to groundwater by controlled TL upgrade-related drilling and blasting within a 0.5-mile radius of documented caves.
- Biological Resources
  - Revegetate with native and/or non-invasive vegetation to restore habitat, including up to 150 acres of native plant meadow that would promote pollinators in the project area, reduce erosion, limit the spread of invasive species, and follow USFWS recommendations regarding biological resources and pollinator species.
  - Ensure that any soil, baled hay or straw, plants and sod with roots and soil attached, soil-moving equipment, or other ''Regulated Articles,'' as defined by U.S. Department of Agriculture, are in compliance with Animal and Plant Health Inspection Service Quarantine Regulations.
  - To minimize Project effects to the state-listed Tuscumbia darter and the globally rare round-rib elimia, thin the dense vegetative buffer along Wheeler Branch to expand suitable habitat for the two species and maintain the thinned buffer during Project operation.
  - Use downward facing and/or low-glare lighting to limit attracting wildlife, particularly migratory birds.
  - Minimize direct impacts to some migratory birds and federally listed tree roosting bats by clearing trees in winter months (November 15 to March 15) outside of nesting season and roosting season, respectively.
  - Avoid and minimize effects to caves and federally listed bats during TL upgrades:
    - Drill or blast within a 0.5 mile radius of documented caves in a manner that would not compromise the structural integrity or alter the karst hydrology of the cave.
    - Avoid herbicide use within 200 feet of portals associated with caves capable of supporting cave-associated species and on surface water or wetlands unless specifically labeled for aquatic use.
    - Conform to federal and state regulations and label requirements when applying herbicide to filter and buffer strips.
    - Limit the clearing of vegetation within a 200-foot radius of documented caves, if needed, to hand or small machinery (*e.g.,* chainsaws, bush-hog, mowers) to protect potential recharge areas of cave streams and other karst features that are connected hydrologically to caves.
    - Conduct drilling, blasting, or other activities involving continuous noise within 0.5 miles of a cave with assumed presence of winter-roosting federally listed bats during warmer months (March 16–October 14) to avoid the winter roosting period.
- Noise
  - Limit construction activities primarily to daytime hours and ensure that heavy equipment, machinery, and vehicles utilized at the Project Site meet all federal, state, and local noise requirements.
- Air Quality
  - Comply with local ordinances or burn permits if burning of vegetative debris is required and use BMPs such as periodic watering, covering open-body trucks, and establishing a speed limit to mitigate fugitive dust.
- Cultural Resources
  - Adhere to setbacks from certain NRHP-eligible and listed cultural

resources, and other avoidance, minimization, and mitigation measures in consultation with AHC and federally recognized tribes.

○ Adhere to the following NHPA Section 106 MOA stipulations:

■ TVA would produce two copies of a traveling exhibit consisting of three to five retractable displays on African American life in late nineteenth to mid-twentieth century Lawrence County and WSRHD. One copy would be delivered to AHC, while the other copy would be used for future TVA public events within the region.

■ TVA would construct a wooden fence along the eastern boundary of NRHP-listed Pond Spring to match the existing fencing along the north edge of the property and in keeping with the documented historical fencing.

■ TVA would prepare updated NRHP nomination forms for Pond Spring and Bride's Hill and submit to AHC within one year of the signature of the MOA.

• Waste Management

○ Dispose of wastes in approved, offsite facilities, and no new on-site waste management facilities would be developed.

○ Develop and implement a variety of plans and programs to ensure safe handling, storage, and use of hazardous materials.

• Public and Occupational Health and Safety

○ Emphasize BMPs in health and safety plans for site safety management to minimize potential risks.

• Transportation

○ While not anticipated based on results of a traffic study, implement mitigation measures in coordination with Alabama Department of Transportation if traffic from the Project activities substantially disrupt normal traffic patterns in the area.

TVA employs standard practices when constructing, operating, and maintaining TLs, structures, and the associated right-of-way (ROW) and access roads. Routine measures that would be taken to reduce the potential for adverse environmental effects during the TL upgrade activities are as follows:

• TVA would utilize standard BMPs to minimize erosion during construction, operation, and maintenance activities associated with the transmission modifications. These BMPs are described in ''A Guide for Environmental Protection and BMPs for TVA Construction and Maintenance Activities—Revision 3'' (TVA's BMP Manual) and the ''Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas.''

• To minimize the introduction and spread of invasive species in the ROW, access roads, and adjacent areas, TVA would follow standard operating procedures consistent with Executive Order 13112 (Invasive Species) for revegetating the areas with noninvasive plant species as defined by TVA.

• Stream reaches that could be affected by the proposed activities would be protected by implementing standard BMPs as identified in TVA's BMP manual and the ''Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas.''

• In areas requiring chemical treatment, only USEPA-registered and TVA-approved herbicides and other pesticides would be used in accordance with label directions designed, in part, to restrict applications near receiving waters and to prevent unacceptable aquatic impacts.

• To minimize adverse impacts on natural and beneficial floodplain values, the following mitigation measures would be implemented:

○ Construction in the floodplain would adhere to the TVA subclass review criteria for TL location in floodplains.

○ BMPs as noted above, both generally and for stream reaches, would be used during construction activities.

○ To the extent practicable, TL construction and maintenance activities would be scheduled during dry periods.

○ Road improvements crossing floodplains would be done in such a manner that upstream flood elevations would not be increased by more than 1.0 foot.

○ The TL ROW would be revegetated where vegetation is removed.

Bryan Williams,

Senior Vice President, Generation Projects and Fleet Services.

[FR Doc. 2022–14125 Filed 6–30–22; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0641]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Employee Assault Prevention and Response Plan

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 submission of Employee Assault Prevention and Response Plans (EAPRP), for customer service agents of certificate holders conducting operations. The certificate holders will submit the information to be collected to the FAA for review and acceptanc as required by the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by August 30, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Sheri A. Martin, Federal Aviation Administration, Safety Standards, AFS–200 Division, 777 S Aviation Blvd., Suite 150, El Segundo, CA 90245.

By Fax: 424–405–7218.

FOR FURTHER INFORMATION CONTACT: Daniel T. Ronneberg by email at: *Dan.Ronneberg@faa.gov;* phone: 202–267–1216.

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: 2120–0787.

Title: Employee Assault Prevention and Response Plan.

Form Numbers: There are no forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 551 of the Act required air carriers operating under 14 CFR part 121 to submit to the FAA for review and acceptance an Employee Assault Prevention and Response Plan (EAPRP) related to the customer service

agents of the air carrier that is developed in consultation with the labor union representing such agents. Section 551(b) of the Act contains the required contents of the EAPRP, including reporting protocols for air carrier customer service agents who have been the victim of a verbal or physical assault.

Respondents: Nine Part 121 Air Carriers.

Frequency: Once for submission or revision of the plan.

Estimated Average Burden per Response: 22 hours.

Estimated Total Annual Burden: $5,594.00.

Issued in Washington, DC, on June 27, 2022.

Sheri Martin,

Management and Program Analyst, FAA, Safety Standards, AFS–200 Division.

[FR Doc. 2022–14092 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Unmanned Aircraft Systems Beyond Visual Line of Sight Aviation Rulemaking Committee Final Report; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This action announces a public meeting of the UAS Beyond Visual Line of Sight (BVLOS) Aviation Rulemaking Committee (ARC) Final Report.

DATES: The meeting will be held on July 26, 2022, from 5:30 p.m.–7:30 p.m. Eastern Time.

Request for accommodations to a disability must be received by July 15, 2022.

Request to provide oral comment must be received by July 11, 2022.

Written comments will be accepted through August 2, 2022.

ADDRESSES: This meeting will be held virtually. Members of the public who wish to view the meeting can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.*

Members of the public who wish to provide written comments and/or oral comments may do so by emailing *9-FAA-UAS-BVLOS@faa.gov.*

Meeting minutes and other information will be posted at: *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/837.*

FOR FURTHER INFORMATION CONTACT: Laura E. Gómez, Federal Aviation Administration, at *9-FAA-UAS-BVLOS@faa.gov* with ''Attention to Laura E. Gómez'' in the subject line or by phone at (202) 267–8076.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2021, the FAA established the UAS BVLOS ARC to provide recommendations to the FAA on performance-based regulatory requirements to normalize safe, scalable, economically viable, and environmentally advantageous UAS BVLOS operations that are not under positive air traffic control (ATC). The UAS BVLOS ARC, comprised of stakeholders from 86 organizations, was tasked with providing recommendations that addressed requirements, and supported concepts of the following BVLOS operations: long-line linear infrastructure inspections, industrial aerial data gathering, small package delivery, and precision agriculture operations, including crop spraying.

A copy of the full UAS BVLOS ARC charter and final report can be downloaded at: *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/837.*

Purpose

The FAA is hosting a public meeting to give members of the public an opportunity to comment on the UAS BVLOS ARC Final Report. We invite public comments related to all aspects of the final report. In particular, we are interested in comments related to initial reactions and areas that the FAA should further explore for performance-based regulatory requirements to normalize safe, scalable, economically viable, and environmentally advantageous UAS BVLOS operations that are not under positive ATC.

Public Participation

Requests to provide oral comments related to the BVLOS ARC report during the meeting must be received no later than July 11, 2022, and must include the commenter's full name and email address. Requests received without this information may not be given the opportunity to provide oral comment. The opportunity to provide oral comment will be given in the order that the requests are received. Comments should be limited to five minutes and must be reserved to the topic of the BVLOS ARC Final Report. Members of the public who submit a request to make oral comments during the meeting will receive a confirmation email with instructions on how to participate in the meeting virtually.

Commenters who may need longer than five minutes are strongly encouraged to submit a written comment. The FAA will accept written comments until August 2, 2022.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Peter J. Merkle, Jr.,

Executive Director, UAS Integration Office (AUS), Federal Aviation Administration.

[FR Doc. 2022–14128 Filed 6–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Comment Request; Licensing Manual

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision to a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Licensing Manual.''

DATES: Comments must be received on or before August 30, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0014, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0014'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu, and click on ''Information Collection Review.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0014'' or ''Licensing Manual.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the revision of the collection of information set forth in this document.

Title: Licensing Manual.

OMB Control No.: 1557–0014.

Abstract: The Licensing Manual sets forth the OCC's policies and procedures for the formation of a national bank or Federal branch or agency, entry into the Federal banking system by other institutions, and corporate expansion and structural changes by existing banks. The Manual includes sample documents to assist the applicant in understanding the types of information the OCC needs in order to process a filing. An applicant may use the format of the sample documents or any other format that provides sufficient information for the OCC to act on a particular filing, including the OCC's electronic filing system, the Central Application Tracking System (CATS).

To reflect revisions to 12 CFR part 5, which was revised effective January 11, 2021,[1] the following applications, notices and templates are being amended.

- Instructions—Bylaws (National Banks)
- Instructions—Articles of Association (National Banks)
- Articles of Association (National Banks)
- Model Bylaws for Stock Associations (Federal Savings Associations)
- Model Charter for Stock Associations (Federal Savings Associations)
- Federal Mutual Association Charter (Federal Savings Associations)
- Federal Mutual Association Bylaws (Federal Savings Associations)
- Application for Charter or Bylaw Amendment (Federal Savings Associations)
- Notice for Charter and Bylaw Amendment (Federal Savings Associations)
- Management Interlock Application
- Increase in Permanent Capital and Preferred Stock Terms Application
- Increase in Permanent Capital Notice
- Application for Reduction of Permanent Capital, or Dividends Payable in Property Other Than Cash, or Capital Distribution
- Reverse Stock Split Application
- Quasi-Reorganization Application
- Issuance of, or Prepayment of, or Material Changes to Subordinated Debt After-the-Fact Notice
- Issuance of Subordinated Debt and Inclusion as Tier 2 Capital Application
- Prepayment of, or Material Changes to, Existing Subordinated Debt Application
- Operating Subsidiary Application
- Other Equity and Pass-Through Investments Application
- Operating Subsidiary After-the-Fact Notice (National Banks)
- Equity Investment in Statutory Subsidiary After-the-Fact Notice (National Banks)
- Financial Subsidiary Application (National Banks)
- Financial Subsidiary Certification (National Banks)
- Financial Subsidiary Application and Certification (National Banks)
- Bank Service Company Notice
- Service Corporation Application (Federal Savings Associations)
- Subsidiary Redesignation Notice (Federal Savings Associations)
- 12 U.S.C. 1828(m) Investment Application (Federal Savings Associations)
- After-the-Fact Notice for Satisfaction of DPC Other Equity Investments and Pass-Through Investments
- After-the-Fact Notice for Other Equity Investments and Pass Through Investments

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,694.

Estimated Total Annual Burden: 12,481.15.

Comments submitted in response to this notice will be summarized and included in the submission to OMB. Comments are requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

[1] 85 FR 80404 (December 11, 2020).

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–14060 Filed 6–30–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one person currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of this person remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 28, 2022, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

LOPEZ DELGADO, Ruy, Carretera Masaya, Km 6.5, Plaza 800 Mts Sur Lomas Santo Domingo, Casa #6, Managua, Nicaragua; DOB 30 Jun 1949; POB Managua, Nicaragua; nationality Nicaragua; Gender Male; Passport C01850896 (Nicaragua) issued 11 May 2015 expires 11 May 2025; National ID No. 0013006490003J (Nicaragua) (individual) [NICARAGUA].

-to-

DELGADO LOPEZ, Ruy, Carretera Masaya, Km 6.5, Plaza 800 Mts Sur Lomas Santo Domingo, Casa #6, Managua, Nicaragua; DOB 30 Jun 1949; POB Managua, Nicaragua; nationality Nicaragua; Gender Male; Passport C01850896 (Nicaragua) issued 11 May 2015 expires 11 May 2025; National ID No. 0013006490003J (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua,'' for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

Dated: June 28, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–14105 Filed 6–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Affairs Central Office (VACO) and Office of Operations, Security, and Preparedness, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying an existing system of records entitled, ''Department of Veterans Affairs Personnel Security File System-VA (VAPSFS)'' 145VA005Q3). The modification to the existing system of records addresses modernized system processes and updated routine uses. This system of records supports the Department in conducting end-to-end personnel security, fitness, suitability, and credentialing processes. This system of records contains records related to employee and contractor vetting as well as investigative, administrative, adjudicative, and/or determination information for decisions concerning whether an individual is suitable or fit for Government employment or eligible to access classified national security information.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *https://www.regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Department of Veterans Affairs Personnel Security File System (VAPSFS)-VA'' 145VA005Q3)''. Comments received will be available at *https://www.regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Trish Moore, Director, Department of Veterans Affairs Personnel Security and Credential Management (PSCM) Program Manager, VA Central Office (VACO), 810 Vermont Avenue, Room C–6, Washington, DC 20420, (202) 461–0496/5240 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The VA Personnel Security File System (VAPSFS) (also known as the ''Veterans Affairs Centralized Adjudication Background Investigation System (VA–CABS)'') is an enterprise-wide, standardized, and integrated case management system for adjudication, background investigation, and reinvestigation processes. VA–CABS will serve as the department's system of records for adjudication and investigation-related data.

This system supports the Department in conducting end-to-end personnel security, fitness, suitability, and credentialing processes. This system of records contains records related to employee and contractor vetting as well as investigative, administrative, adjudicative, and/or determination information for decisions concerning

whether an individual is suitable or fit for Government employment or eligible to access classified national security information.

VA CABS maintains information on security clearance access, personnel security eligibility, suitability for Government employment, fitness to perform work for or on behalf of the U.S. Government as a contractor. It also provides an all-inclusive medium to document personnel security adjudicative actions within the agency, allowing users to provide investigation and adjudication updates to security managers and other security officials.

All users of VA–CABS must be appropriately screened, investigated, and granted access based on the user's specific functions, security eligibility, and access level. VA–CABS will be used to ensure VA is upholding the highest standards of integrity, loyalty, conduct, and security among its employees and contract personnel.

It will also help streamline the vetting process by utilizing a single system for all phases of vetting operations to include adjudication, continuous evaluation/continuous vetting, and case management, while maintaining compliance with all applicable legal, regulatory and policy authorities.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on May 25, 2022 for publication.

Dated: June 28, 2022

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Department of Veterans Affairs Personnel Security File System-VA (VAPSFS)—(145VA005Q3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Electronic records are kept at the VA Data Centers at Falling Waters, WV; Hines, IL; Austin Automation Center, Austin, TX; and at the SIC, Little Rock, AR.

SYSTEM MANAGER(S):

Officials responsible for policies and procedures: Trish Moore, Department of Veterans Affairs Personnel Security and Credential Management (PSCM) Director, VA Central Office (VACO), 810 Vermont Avenue, Room C–6, Washington, DC 20420, (202) 461–0496/5240. The Authorizing Official for VA–CABS is Daniel McCune, Department of Veterans Affairs Office of Information and Technology, Enterprise Program Management Office Executive Director, 810 Vermont Avenue, Room 340, Washington, DC 20420, 202–632–7390 (these are not toll-free numbers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 9397, 10450, 10865, 12333, and 12356; 5 U.S.C 3301 and 9101; 42 U.S.C 2165 and 2201; 50 U.S.C 781 to 887; 5 C.F.R 5, 732, and 736; and Homeland Security Presidential Directive 12.

PURPOSE(S) OF THE SYSTEM:

The records in this system are used to provide investigative and related administrative, adjudicative, and other information necessary to determine whether an individual is suitable or fit for Government employment; eligible for physical access to VA controlled facilities and information systems; eligible to hold sensitive positions (including but not limited to eligibility for access to classified information); fit to perform work for or on behalf of the U.S. Government as a contractor; qualified to perform contractor services for the U.S. Government; or loyal to the United States; while maintaining compliance with applicable legal, regulatory and policy authorities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former government employees, applicants, volunteers, health professions trainees, consultants, experts, and contractor personnel working for or on behalf of the VA; (2) personnel who are appealing a denial or a revocation of a Veterans Affairs-issued security clearance; (3) employees and contractor personnel who have applied for the HSPD–12 Personal Identity Verification (PIV) Card; (5) individuals who are not Veterans Affairs employees, but who are or were involved in Veterans Affairs programs under a cooperative assignment or under a similar agreement. As part of the on-boarding process, VA Subjects undergo a Special Agency Check (SAC) (fingerprint) and a background investigation based on their position sensitivity and risk designation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicable records containing the following information from one or more of the categories within background investigations relating to personnel investigations conducted by the Defense Counterintelligence and Security Agency (DCSA) and other Federal agencies and departments on a pre-placement and post-placement basis to make suitability, fitness, and HSPD–12 PIV determinations and for granting security clearances.

This system maintains information collected as part of the investigative vetting process. This information may include the individual's personally identifiable information; residential, educational, employment, and mental health history; financial details, and criminal and disciplinary histories; to include:

(1) An individual's name, former names and aliases; date and place of birth; social security number (SSN); height; weight; hair and eye color; gender; mother's maiden name; current and former home addresses to include names and addresses of neighbors and references, phone numbers, and email addresses; employment history to include names of supervisors and colleagues; military record information; selective service registration record; education and degrees earned; names of associates and references with their contact information; citizenship; passport information; criminal history; civil court actions; prior security clearance and investigative information; mental health history; records related to drug and/or alcohol use; credit reports; the name, date and place of birth, SSN, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s); the citizenship, name, date and place of birth, and address for relatives; information on foreign contacts and activities; association records; information on loyalty to the United States; publicly available social media information; and other agency reports furnished to VA in connection with the background investigation process, and other information developed from the above;

(2) Position designation/risk/sensitivity; status of current adjudicative action; status of security clearance eligibility and/or access, suitability, fitness, or HSPD–12 PIV determinations; and investigative records related to initial vetting, reinvestigation, continuous evaluation, and/or continuous vetting;

(3) Summaries of personal and third-party interviews conducted during the background investigation;

(4) Signed Classified Information Non-Disclosure Agreement (SF 312), and related supplemental documents for those persons issued a security clearance;

(5) An automated data system reflecting identification data on incumbents and former employees, disclosure and authorization forms, and record of investigations, level and date of security clearance, if any, as well as status of investigations;

(6) Records pertaining to suspensions or an appeal of a denial or a revocation of a VA-issued security clearance;

(7) Records pertaining to the personal identification verification process mandated by HSPD–12 and the issuance, denial or revocation of a PIV card; and

(8) Records of personnel background investigations conducted by other Federal agencies.

RECORD SOURCE CATEGORIES:

Records are obtained from individual employees, applicants, detailees, consultants, experts and contractors (including the results of in-person interviews) whose files are on record as authorized by those concerned; investigative reports from federal investigative agencies; criminal or civil investigations; continuous evaluation records; police and credit record checks; personnel records; educational records and instructors; current and former employers; coworkers, neighbors, family members, acquaintances; and authorized security representatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records,· (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ for Litigation or Administrative Proceeding:* VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

13. *Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings:* To another federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a Federal agency, when the government is a party to the judicial or administrative proceeding.

14. *Governmental Agencies, Health Organizations, for Claimants' Benefits:* To Federal, state, and local government agencies and national health organizations as reasonably necessary to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

15. *Governmental Agencies, for VA Hiring, Security Clearance, Contract, License, Grant:* To a Federal, state, local, or other governmental agency maintaining civil or criminal violation records, or other pertinent information, such as employment history, background investigations, or personal

or educational background, to obtain information relevant to VA's hiring, transfer, or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

16. *Federal Agencies, for Employment:* To a Federal agency, except the United States Postal Service, or to the District of Columbia government, in response to its request, in connection with that agency's decision on the hiring, transfer, or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by that agency.

17. *State or Local Agencies, for Employment:* To a state, local, or other governmental agency, upon its official request, as relevant and necessary to that agency's decision on the hiring, transfer, or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by that agency. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, social security number, date of birth, place of birth, Defense Counterintelligence and Security Agency [Investigative Service Provider] investigation number, adjudicative case identification number or some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States. Records on government employees and contractor personnel are retained for 5 years after the employee or contractor relationship ends, but longer retention is authorized if required for business use in accordance with General Records Schedule 5.6, item 181. The records on applicants not selected and separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 5.6, item 180. Investigative reports are maintained in OPM Central-9 (81 FR 70191).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained in a secure, SSOi protected electronic system that utilizes security hardware and software to include: Encryption, multiple firewalls, active intruder detection, and role-based access controls.

Safeguarding VA Subjects' adjudicative and background investigation information is of the utmost importance. Information collected or used in the adjudicative process will be used and disseminated under very strict controls. Permission shall be obtained from DCSA to release any DCSA or other agency investigative material. Reports, records, and files pertaining to adjudicative matters must be maintained in confidence and disseminated only to authorized officials in the VA having a clear, official need to review the material.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Upon publication of a final rule in the **Federal Register**, this system of records will be exempt in accordance with 5 U.S.C. 552a(k)(5). Information will be withheld to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the background investigation.

HISTORY:

73 FR 15852 (March 25, 2008).

[FR Doc. 2022–14118 Filed 6–30–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Blind Rehabilitation Specialist and Visual Impairment Services Team Coordinator Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Blind Rehabilitation Specialists (BRS) and Visual Impairment Services Team (VIST) Coordinators. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before August 30, 2022.

ADDRESSES: Comments may be submitted through *www.regulations.gov*. Comments received will be available at *www.regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of the title 38 of the U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care

services in a State other than the health care professional's State of licensure, registration, certification, or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification, or other State requirement they hold. We emphasized in the rulemaking and reiterate that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develop national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID–19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification, or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Associate Director Patient Care Services; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Office; and Electronic Health Record Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and certifying organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions, in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at *https://www.va.gov/standardsofpractice*.

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice, or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

National Standard for BRS and VIST Coordinators

The proposed format for national standards of practice when there is a national certifying body is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education, certification, license, registration, or other requirement needed to practice this profession at VA

and confirms that this profession follows the standard of practice set by the national certifying body. A final statement confirms that as of the date of the workgroup's research into requirements, all individuals in this profession follow the same standard of practice.

We note that proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

VA qualification standards require BRSs to have at least one active, current, full, and unrestricted certification granted by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP). The following four national certifications from the ACVREP correspond with four distinct specialties within the occupation:

1. Certified Low Vision Therapist (CLVT);
2. Certified Orientation and Mobility Specialist (COMS);
3. Certified Assistive Technology Instructional Specialist for People with Visual Impairments (CATIS); and
4. Certified Vision Rehabilitation Therapist (CVRT).

BRSs can practice under any of these four ACVREP certifications. BRSs who provide orientation and mobility training, communication and daily living therapy, low vision therapy, or assistive technology must possess the corresponding ACVREP certification for the type of service they provide. For example, a BRS who provides low vision therapy must be certified as a CLVT. VA reviewed whether there are any alternative certifications or requirements from any State that could be required for a BRS and found that there were none. Therefore, VA proposes to adopt a standard of practice consistent with these four national certifications; therefore, VA BRSs in each of these four specialties will continue to follow the same standard as set by their national certifications. Standards of practice for each of the four certifications can be found at the following websites:

- CLVT: *https://www.acvrep.org/certifications/clvt-scope*;
- COMS: *https://www.acvrep.org/certifications/coms-scope*;
- CATIS: *https://www.acvrep.org/certifications/catis-scope*; and
- CVRT: *https://www.acvrep.org/certifications/cvrt-scope*.

This national standard of practice for BRSs includes VIST Coordinator because all VIST Coordinator positions are appointed as BRSs. BRS VIST Coordinators may be drawn from traditional blind/vision rehabilitation backgrounds or from counseling backgrounds. There is no national or State license or certification for VIST Coordinators; therefore, there is no variance with a State in the standard of practice for VIST Coordinators. VA VIST Coordinators must be licensed, certified, or registered as BRSs, Social Workers, Certified Rehabilitation Counselors, or other health care professionals. VIST Coordinators who are licensed, certified, or registered as BRSs, Social Workers, Certified Rehabilitation Counselors, or in other health care occupations must adhere to the VA national standard of practice for that specific occupation.

Because the practice of Blind Rehabilitation Specialists and VIST Coordinators is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented. However, national standards of practice for other occupations may impact practice of those occupations at VA once they are implemented.

Proposed National Standard of Practice for BRSs

BRSs use assessments, therapies and technologies to improve the independent function, quality of life and adjustment for Veterans who are blind or visually impaired. BRSs evaluate Veterans through interviews, tests and measurements and use such findings either solely or as a part of an interdisciplinary team to develop and implement blind and vision rehabilitation programs for individual Veterans. Instructional activities are directed toward achieving therapeutic objectives for Veterans who are blind or visually impaired. These activities include effective communication and visual skills; instruction on optical low vision devices; orientation to and management of the environment; safe ambulation and travel; access to information through the use of assistive technologies; manual skills; proficiency and understanding in activities of daily living; pursuit of avocational and vocational skills; and education and adjustment to visual impairment.

BRSs in VA possess the required education and certification from ACVREP in accordance with VA qualification standards, as more specifically described in VA Handbook 5005, Staffing, Part II, Appendix G41. This national standard of practice confirms BRSs practice in accordance with the ACVREP standards based on the certification they hold, including CLVT, COMS, CATIS and CVRT, available at: *www.acvrep.org*. As of August 2021, BRSs in all States follow these national certifications.

Proposed National Standard of Practice for VIST Coordinators

VIST Coordinators provide adjustment counseling, coordination of services, assure adequate compensation and benefits and conduct complex negotiations with the medical and benefit systems as well as non-VA service delivery systems for Veterans who are blind or visually impaired.

There is no national or State license or certification for VIST Coordinators; therefore, there is no variance with a State in the standard of practice for VIST Coordinators. VA VIST Coordinators must be licensed, certified, or registered as BRSs, Social Workers, Certified Rehabilitation Counselors, or other health care professionals as outlined in VA Handbook 5005, Staffing, Part II, Appendix G41. More specifically, VIST Coordinators must be credentialed or certified through the following:

a. Any certification via ACVREP, including CLVT, COMS, CATIS and CVRT;

b. License or certification by a State to independently practice social work at the master's degree level;

c. Certification via the Commission on Rehabilitation Counselor Certification, Certified Rehabilitation Counselor; or

d. License or certification by a State to independently practice in other health care occupations.

VIST Coordinators licensed, certified, or registered as BRSs, Social Workers and Certified Rehabilitation Counselors, or in other health care occupations, must adhere to the VA national standard of practice for that specific occupation.

Request for Information

1. Are there any required trainings for the aforementioned practices that we should consider?
2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?
3. Is there any variance in practice that we have not listed?
4. What should we consider when preempting conflicting State laws, regulations, or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about these national standards of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 14, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

[FR Doc. 2022–14033 Filed 6–30–22; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 80 and 1090
Renewable Fuel Standard (RFS) Program: RFS Annual Rules; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 1090

[EPA–HQ–OAR–2021–0324; FRL–8521–01–OAR]

RIN 2060–AV11

Renewable Fuel Standard (RFS) Program: RFS Annual Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is required to set standards every year to implement nationally applicable renewable fuel volume targets. This action modifies the 2021 and 2022 statutory volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel, as well as establishes the 2022 volume target for biomass-based diesel. This action also modifies the previously established cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. In addition, this action establishes the 2020, 2021, and 2022 renewable fuel percentage standards for all four of the above biofuel categories. Finally, this action also addresses a judicial remand of the 2016 standard-setting rulemaking, as well as several regulatory changes to the Renewable Fuel Standard (RFS) program, including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, and clarifications of existing regulations.

DATES: This rule is effective on August 30, 2022. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of August 30, 2022. The incorporation by reference of ASTM E711–87 (R2004) was approved by the Director of the Federal Register as of July 1, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0324. 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 is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dallas Burkholder, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4766; email address: *RFS-Rulemakings@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel, as well as renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] codes	Examples of potentially affected entities
Industry	324110	Petroleum refineries.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products merchant wholesalers.
Industry	221210	Manufactured gas production and distribution.
Industry	454319	Other fuel dealers.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR parts 80 and 1090. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

A red-line version of the regulatory language that incorporates the changes in this action is available in the docket for this action.

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements of the Energy Policy Act of 2005 (EPAct), which were codified in CAA section 211(o). The statutory requirements were subsequently amended by the Energy Independence and Security Act of 2007 (EISA). The statute sets forth annual, nationally applicable volume targets for each of the four categories of renewable fuel. It also directs EPA to modify or establish volume targets in certain circumstances. EPA must then translate the volume targets into compliance obligations, expressed as annual percentage standards, that obligated parties must meet every year.

In this action we are establishing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2021 and 2022, and the biomass-based diesel (BBD) applicable volume for 2022,[1] as well as modifying the applicable volumes that EPA previously established for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020.[2] [3] We are also establishing the annual percentage standards (also known as ''percent standards'') for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel that apply to gasoline and diesel fuel produced or imported by obligated parties in 2020, 2021, and 2022. In addition, we are addressing the remand of the 2016 annual rule by the U.S. Court of Appeals for the D.C. Circuit, in *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (2017) (hereafter ''*ACE*'') by establishing a supplemental volume of 250 million gallons for 2022. EPA intends to establish an additional supplemental volume of 250 million gallons for 2023 in a subsequent action.

TABLE I–1—FINAL VOLUME REQUIREMENTS

[Billion RINs] [a]

Category	2020	2021	2022
Cellulosic Biofuel	0.51	0.56	0.63
Biomass-Based Diesel [b]	[c] 2.43	[d] 2.43	2.76
Advanced Biofuel	4.63	5.05	5.63
Total Renewable Fuel	17.13	18.84	20.63
Supplemental Standard	n/a	n/a	[e] 0.25

[a] One Renewable Identification Number (RIN) is equivalent to one ethanol-equivalent gallon of renewable fuel. Throughout this preamble, RINs are generally used to describe total volumes in each of the four categories shown above, while gallons are generally used to describe volumes for individual types of biofuel such as ethanol, biodiesel, renewable diesel, etc. Exceptions include BBD, which is always given in physical volumes, and biogas and electricity, which are always given in RINs.
[b] The BBD volumes are in physical gallons (rather than RINs).
[c] Established in the 2019 RFS annual rule (83 FR 63704, December 11, 2018).
[d] Established in the 2020 RFS annual rule (85 FR 7016, February 6, 2020).
[e] The supplemental standard is an additional total renewable fuel obligation. Thus, the total renewable fuel obligation for 2022 is 20.87 billion RINs; 20.63 billion RINs for the 2022 total renewable fuel standard and 0.25 billion RINs for the supplemental standard. The supplemental standard can be satisfied with any category (D3, D4, D5, D6, or D7) of RIN.

Finally, we are finalizing several regulatory changes to the RFS program, including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, and clarifications of existing regulations.

The RFS program is an important federal policy supporting the production of low-greenhouse gas (GHG) renewable fuels, which are an important element of addressing climate change through transportation policy. Expanding the production and use of renewable fuels also helps protect Americans from volatile crude oil prices by reducing our reliance on fossil fuels. As detailed in this rule's Regulatory Impact Analysis (RIA), EPA estimates that this rule will reduce the imports of crude oil and refined products by approximately 2.9 billion gallons. We have estimated that these reductions in imports will result in $227 million of energy security benefits. The actual energy security benefits could be higher as this estimate does not consider military cost impacts of changes to U.S. imports of crude oil and refined products. Finally, increasing the domestic production and use of renewable fuels will also create good-paying American jobs; support our rural

[1] The 2021 BBD volume requirement was established in the 2020 final rule. 85 FR 7016 (February 6, 2020).

[2] 85 FR 7016 (February 6, 2020).

[3] As explained in Section II, we did not trigger the reset authority for BBD. Thus, we are not resetting the previously finalized 2020 and 2021 BBD volumes. In addition, actual BBD use in both 2020 and 2021 is projected to exceed the previously finalized volumes. This is consistent with the findings in the 2019 and 2020 final rules, which established the 2020 and 2021 BBD volumes respectively, anticipating that additional BBD would be used above the BBD volumes to satisfy the advanced biofuel standards. Thus, we see no need to retroactively reconsider the BBD volumes in any event. As discussed in Section III.F, we are setting the 2022 BBD volume pursuant to our ''set'' authority under CAA section 211(o)(2)(B)(ii).

economies, American agriculture, and manufacturing; and reduce the impacts of climate change.

The final volume requirements in this action, combined with the changes EPA is separately taking with respect to the small refinery exemption (SRE) program, will provide much-needed stability to the RFS program. It will also strengthen the role of the program in advancing greater use of domestically produced low-carbon renewable fuels that are critical to building real energy independence in the long-term.

Throughout this document, EPA discusses and addresses comments on the proposed rule that stakeholders submitted to EPA; more in-depth responses are located in a separate Response to Comments (RTC) document, available in the docket for this action. EPA also prepared an RIA to support this final rule, available in the docket for this action.

A. Legal Authorities To Modify and Establish Renewable Fuel Volumes

For the 2020, 2021, and 2022 cellulosic biofuel, advanced biofuel, and total renewable fuel volumes, EPA is fulfilling our statutory obligation to ''reset'' the statutory volumes in accordance with CAA section 211(o)(7)(F). This provision, entitled ''Modification of Applicable Volumes,'' provides that, if a waiver of any statutory volume target exceeds specified thresholds, EPA shall modify the statutory volume targets for all years following the year that the threshold was exceeded. This obligation has been triggered by EPA actions waiving volumes in previous annual standard-setting rulemakings. Under this statutory provision, we are establishing new volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020, 2021, and 2022.[4]

When resetting the statutory targets, EPA must comply with the processes, criteria, and standards set forth in CAA section 211(o)(2)(B)(ii). In addition to reviewing the implementation of the program during previous years and coordinating with the Secretary of Energy and the Secretary of Agriculture, EPA must also analyze several factors:

- The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
- The impact of renewable fuels on the energy security of the U.S.;
- The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
- The impact of renewable fuels on the infrastructure of the U.S., including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
- The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

With respect to the 2022 BBD volume, we are setting this volume under CAA section 211(o)(2)(B)(ii). The requirement to reset the statutory volume targets does not apply to BBD. However, CAA section 211(o)(2)(B)(ii) separately requires that EPA set the BBD volume for years including 2022 based on an analysis of the same statutory factors as the reset authority.

In addition to these statutory provisions, the D.C. Circuit has also established principles that EPA must follow when promulgating RFS rulemakings that are retroactive (*i.e.,* rules that apply to conduct prior to the rule becoming effective) and late (*i.e.,* rules promulgated after the statutory deadline).[5] Namely, EPA generally has authority to promulgate such RFS rules, but EPA must reasonably consider and mitigate the burdens on obligated parties caused by the issuance of these rules after the statutory deadline. Several aspects of this rulemaking are either retroactive or are being finalized after the statutory deadline, or both. Therefore, we consider this caselaw as required by the D.C. Circuit and consistent with our obligation to act reasonably. We further discuss all our legal authorities to modify or establish volumes in Section II.

B. 2020 Volumes

EPA established the applicable 2020 volume requirements and percentage standards in late 2019.[6] Since we promulgated those standards, significant and unanticipated events occurred that affected the fuels markets in 2020. The two most prominent of these events were:

- The COVID–19 pandemic, which caused a major drop in transportation fuel demand, a disproportionate fall in gasoline demand relative to diesel demand, and significantly reduced production and use of biofuels in 2020 below the volumes we anticipated could be achieved, and
- The volume of gasoline and diesel fuel exempted from 2020 RFS obligations through SREs is far lower than projected in the 2020 final rule.

These events adversely affected the ability of obligated parties to comply with the applicable standards and to achieve the intended volumes in the 2020 final rule.[7] As a result, we proposed to retroactively adjust the 2020 volumes and standards to reflect the actual volumes of renewable fuels and transportation fuel consumed in the U.S. in 2020.[8] In this final rule we are establishing revised volumes and standards for 2020 based on the actual volumes of renewable fuel and transportation fuel used in the U.S. in 2020, as we proposed. As we discuss further in Section III, the revised renewable fuel volumes are supported by our analysis of the statutory factors that we must consider when resetting RFS volumes. Our decision to use updated data on actual transportation fuel consumption is further explained in Section V.

C. 2021 Volumes

For 2021, we proposed establishing volumes that were equal to the volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel that were projected to be used in the U.S. in 2021 based on data available at the time of the proposed rule. We also indicated our intent to update these projections in the final rule. As discussed in further detail in Section III, we believe this approach for 2021 is appropriate based on our analysis of the statutory factors EPA must analyze when resetting the RFS volumes, including our finding that this retroactive rulemaking has no ability to incentivize increased production and use of renewable fuel in 2021. Consistent with our proposed rule, we are finalizing volumes for 2021

[4] As we explain further in Section II, we are also independently justifying the 2020, 2021, and 2022 cellulosic biofuel volumes and the 2022 advanced biofuel and total renewable fuel volumes under the cellulosic waiver authority.

[5] See, *e.g., Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (D.C. Cir. 2017); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *Nat'l Petrochemical & Refiners Ass'n* v. *EPA,* 630 F.3d 145, 154–58 (D.C. Cir. 2010).

[6] 85 FR 7016 (February 6, 2020). EPA signed this rulemaking on December 19, 2019.

[7] EPA extended the 2020 compliance deadline for obligated parties to January 31, 2022 (86 FR 17073, April 1, 2021). We subsequently further extended that deadline in a separate action (87 FR 5696, February 2, 2022).

[8] We also call such volumes the volumes that are actually consumed, actually used, or actually supplied. In this context, we are using the term ''supply'' distinct from the statutory term ''inadequate domestic supply'' in CAA section 211(o)(7)(A)(ii).

that are equal to the actual volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel that were used in the U.S. in 2021.

D. 2022 Volumes

For 2022 we proposed a cellulosic biofuel volume that was equal to the volume of qualifying cellulosic biofuel projected to be used in the U.S. in 2022 and volumes of non-cellulosic advanced biofuel and conventional renewable fuel that were consistent with the implied statutory targets for these categories. These volumes were significantly higher than the proposed volumes for 2020 and 2021. In this final rule we are establishing volumes for 2022 that are consistent with the proposed volumes, after updating our projection of cellulosic biofuel use in 2022 using more recent data. As we discuss further in Section III, these volumes are based on our analysis of the statutory factors, including our assessment of the ability for the RFS program to incentivize increased production and use of renewable fuel in 2022 (particularly given the partially prospective nature of the 2022 standards relative to the entirely retrospective 2020 and 2021 standards), the statutory intent to support increasing production and use of renewable fuels, and the potential positive impacts of renewable fuels on several of the statutory factors such as climate change and energy security.[9] The volumes for 2022 also reflect market constraints on the ability of RFS annual volume requirements to incentivize increased production and use of renewable fuel in the near term. These constraints include the commercial availability of cellulosic biofuel, the price and availability of feedstocks, and the availability of infrastructure to distribute higher-level blends of ethanol. Finally, the volumes for 2022 take into consideration the potential adverse impacts of the renewable fuel volumes on several statutory factors including wildlife habitat, water quality, and water supply.

E. Response to the ACE Remand

In 2015, EPA established the total renewable fuel standard for 2016. As part of that rule, EPA relied upon the general waiver authority under a finding of inadequate domestic supply to reduce the total renewable fuel volume target by 500 million gallons.[10] Several parties challenged that action, and in *ACE* the D.C. Circuit vacated EPA's use of the general waiver authority, finding that such use exceeded EPA's authority under the CAA. Specifically, EPA had impermissibly considered demand-side factors in its assessment of inadequate domestic supply, rather than limiting that assessment to supply-side factors. The court remanded the rule back to EPA for further consideration.

We now intend to restore the full 500 million gallons that we improperly waived in the 2016 rule but to do so over two years. Specifically, as we discuss further in Section IV, we are adding a supplemental volume obligation of 250 million gallons, which will be implemented as a supplemental 2022 standard as we proposed. We also intend to propose an additional supplemental volume of 250 million gallons for 2023 in a subsequent action.

F. Annual Percentage Standards

The statute directs EPA to establish annual standards that translate the nationally applicable volume targets into compliance obligations on obligated parties. In this action, EPA is finalizing annual standards for 2020, 2021, and 2022 for all four categories of renewable fuel. We are also finalizing a supplemental standard to address the *ACE* remand, which will apply in the 2022 compliance year.

The renewable fuel standards are expressed as a volume percentage and are used by each refiner and importer of petroleum-based gasoline or diesel fuel to determine their renewable fuel volume obligations. The specific formulas we use in calculating the renewable fuel percentage standards are found in 40 CFR 80.1405. In the 2020 final rule, we modified the formulas used to calculate the percentage standards to account for a projection of exempt gasoline and diesel fuel volumes produced by small refineries and small refiners.[11] After seeking comment on this issue in the proposed rule, we are maintaining the modified formula. Additionally, we project that no exemptions will be granted for 2020–2022, and thus the exempt volume of gasoline and diesel fuel will be zero for all three years.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I–1. The final standards are shown in Table I.F–1. Details, including the projected gasoline and diesel fuel volumes used, can be found in Section V. Further details regarding the supplemental standard can be found in Section IV.

TABLE I.F–1—PERCENTAGE STANDARDS

Category	2020 (%)	2021 (%)	2022 (%)
Cellulosic Biofuel	0.32	0.33	0.35
Biomass-Based Diesel	2.30	2.16	2.33
Advanced Biofuel	2.93	3.00	3.16
Renewable Fuel	10.82	11.19	11.59
Supplemental Standard	n/a	n/a	0.14

G. Administrative Actions

The regulations promulgated in 2010 require EPA to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass. As discussed in Section VI, we have concluded that 2007 baseline acreage has not been exceeded.

H. Biointermediates

Since the RFS2 program was finalized in 2010, we have become increasingly

[9] Throughout this document we often refer to the ''potential'' impacts (positive or negative) of increased biofuel production to highlight that there is uncertainty associated with these impacts. The lack of the qualifying word ''potential,'' however, does not mean that there is no uncertainty. For a fuller discussion of the uncertainty associated with these impacts see the RIA.

[10] See 80 FR 77420 (December 14, 2015); CAA section 211(o)(7)(A)(ii).

[11] 85 FR 7016 (February 6, 2020).

aware that some renewable fuel producers would like to process fuel at more than one facility. Specifically, renewable fuel producers would like to first have a facility process renewable biomass into a proto-renewable fuel (or ''biointermediate'') and then have a second, separate facility process that biointermediate into renewable fuel. In some cases, it may be preferable for economic or practical reasons for renewable biomass to be subjected to substantial pre-processing at one facility before being sent to a different facility where it is converted into renewable fuel. For example, renewable biomass, such as separated municipal solid waste (MSW), may be converted into biocrude—a biointermediate—at one facility, after which the biointermediate producer would send the biocrude to a petroleum refinery that would further process the biocrude to produce a renewable gasoline or renewable diesel fuel. Such production methodologies have the potential to lower the cost of using cellulosic and other feedstocks for the production of renewable fuels by reducing capital costs for new facilities and/or the storage and transportation costs associated with feedstock handling—especially for cellulosic biomass. Thus, we believe that such technologies provide an opportunity for the future growth in production of the cellulosic biofuels required under the RFS program.

In this action, we are finalizing provisions to allow for the use of certain biointermediates to produce qualifying renewable fuels. These provisions specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. These provisions center around the production, transfer, and use of biointermediates and the creation of new regulatory requirements related to registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production. We further discuss the biointermediates provisions in Section VII.

I. Other Changes

We are finalizing regulatory changes that will assist EPA in implementing our fuel quality and RFS programs. These regulatory changes include:

- Changes to registration requirements concerning baseline volumes
- Changes to attest engagements for parties owning Renewable Identification Numbers (RINs)
- Treatment of confidential business information
- Clarifying the definition of ''agricultural digesters''
- Adding pathways for stand-alone esterification
- Other technical amendments to the RFS regulations

Each of these regulatory changes is discussed in greater detail in Section VIII.

J. Environmental Justice

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice (''EJ''). It directs Federal agencies, to the greatest extent practicable and permitted by law, to make achieving EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on people of color and low-income populations in the United States. EPA defines EJ as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.[12] Executive Order 14008 (86 FR 7619, February 1, 2021) also calls on Federal agencies to make achieving EJ part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' It also declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure and health care.'' EPA also released its ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' providing recommendations on conducting the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and regulatory context.[13]

When assessing the potential for disproportionately high and adverse health or environmental impacts of regulatory actions on people of color, low-income populations, tribes, and/or indigenous peoples, EPA strives to answer three broad questions: (1) Is there evidence of potential EJ concerns in the baseline (the state of the world absent the regulatory action)? Assessing the baseline will allow EPA to determine whether pre-existing disparities are associated with the pollutant(s) under consideration (*e.g.,* if the effects of the pollutant(s) are more concentrated in some population groups). (2) Is there evidence of potential EJ concerns for the regulatory option(s) under consideration? Specifically, how are the pollutant(s) and their effects distributed for the regulatory options under consideration? And, (3) Do the regulatory option(s) under consideration exacerbate or mitigate EJ concerns relative to the baseline? It is not always possible to assess these questions in ways that produce quantitative results, though it may still be possible to describe them qualitatively.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an EJ analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline and regulatory options. Where applicable and practicable, the Agency endeavors to conduct such an analysis. Going forward, EPA is committed to conducting EJ analysis for rulemakings based on a framework similar to what is outlined in EPA's Technical Guidance, in addition to investigating ways to further weave EJ into the fabric of the rulemaking process.

In 2009, under the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (''Endangerment Finding''), EPA considered how climate change threatens the health and welfare of the U.S. population. As part of that consideration, EPA also considered risks to people of color and low-income individuals and communities, finding that certain parts of the U.S. population may be especially vulnerable based on their characteristics or circumstances. These groups include economically and socially disadvantaged communities; individuals at vulnerable lifestages, such as the elderly, the very young, and pregnant or nursing women; those already in poor health or with comorbidities; the disabled; those experiencing homelessness, mental illness, or substance abuse; and/or Indigenous or minority populations

[12] See, *e.g.,* ''Environmental Justice.'' *Epa.gov,* Environmental Protection Agency, 4 Mar. 2021, *https://www.epa.gov/environmentaljustice.*

[13] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 guidance document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' *Epa.gov,* Environmental Protection Agency, *https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

dependent on one or limited resources for subsistence due to factors including but not limited to geography, access, and mobility.

Scientific assessment reports produced over the past decade by the U.S. Global Change Research Program (USGCRP),[14] [15] the Intergovernmental Panel on Climate Change (IPCC),[16] [17] [18] [19] and the National Academies of Science, Engineering, and Medicine [20] [21] add more evidence that the impacts of climate change raise potential EJ concerns. These reports conclude that poorer or predominantly non-White communities can be especially vulnerable to climate change impacts because they tend to have limited adaptive capacities and are more dependent on climate-sensitive resources such as local water and food supplies, or have less access to social and information resources. Some communities of color, specifically populations defined jointly by ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States. In particular, the 2016 scientific assessment on the Impacts of Climate Change on Human Health found with high confidence that vulnerabilities are place- and time-specific, lifestages and ages are linked to immediate and future health impacts, and social determinants of health are linked to greater extent and severity of climate change-related health impacts.

This rule has the potential to reduce GHG emissions, which would benefit all populations including people of color, low-income populations, and indigenous populations. The manner in which the market responds to the provisions in this final rule could also have non-GHG impacts, including both positive and negative impacts. For instance, replacing petroleum fuels with renewable fuels could have impacts on water, air, and hazardous waste exposure for communities living near either existing or new facilities that produce these fuels. Replacing petroleum fuels with renewable fuels could also impact feedstock supplies and land use, which could impact a range of communities through their impacts on air, water, and soil quality, as well as water quantity. Impacts on water quality in particular could impact communities that rely on aquatic ecosystems for income or sustenance, including indigenous peoples. Replacing petroleum fuels with renewable fuels is also projected to cause increases in food and fuel prices, and these price impacts could also disproportionately affect low-income populations who spend a larger portion of their income on food and fuel.

The overall EJ implications of these non-GHG impacts is uncertain. Specifically, it is uncertain whether these impacts are unevenly distributed spatially in ways that coincide with patterns of pre-existing exposure and vulnerabilities for people of color, low income populations, and indigenous peoples. Accurately evaluating the EJ implications would entail predicting where changes in production of renewable fuels and land use occur at a fine spatial scale. That is beyond the scope of our analysis in this rule. A more detailed discussion of potential EJ concerns as a result of this action can be found in Chapter 8 of the RIA.

K. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that Federal agencies such as EPA, along with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (collectively ''the Services''), ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat for such species. Under relevant implementing regulations, consultation is required only for actions that ''may affect'' listed species or designated critical habitat. 50 CFR 402.14. Consultation is not required where the action has no effect on such species or habitat. For several prior RFS annual standard-setting rules, EPA did not consult with the Services under section 7(a)(2).

On September 6, 2019, the D.C. Circuit decided *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559 (2019), finding that EPA had failed to make an effects determination for ESA purposes with regard to the 2018 RFS rule and remanding the rule without vacatur to EPA to make an appropriate effects determination. *See id.* at 598.

On July 16, 2021, the D.C. Circuit decided *Growth Energy* v. *EPA,* 5 F.4th 1 (2021), finding that EPA's determination that the 2019 RFS rule would have no effect on listed species or the designated critical habitat of such species was arbitrary and capricious and remanding the rule to EPA without vacatur to comply with the ruling. *See id.* at 32.

In light of this case law pertaining to EPA's action in prior years and consistent with ESA section 7(a)(2) and relevant ESA implementing regulations at 50 CFR part 402, EPA has been engaged in informal consultation

[14] USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

[15] USGCRP, 2016: The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *https://dx.doi.org/10.7930/J0R49NQX.*

[16] Oppenheimer, M., M. Campos, R.Warren, J. Birkmann, G. Luber, B. O'Neill, and K. Takahashi, 2014: Emergent risks and key vulnerabilities. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L.White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 1039–1099.

[17] Porter, J.R., L. Xie, A.J. Challinor, K. Cochrane, S.M. Howden, M.M. Iqbal, D.B. Lobell, and M.I. Travasso, 2014: Food security and food production systems. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L.White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 485–533.

[18] Smith, K.R., A.Woodward, D. Campbell-Lendrum, D.D. Chadee, Y. Honda, Q. Liu, J.M. Olwoch, B. Revich, and R. Sauerborn, 2014: Human health: impacts, adaptation, and co-benefits. In: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Field, C.B., V.R. Barros, D.J. Dokken, K.J. Mach, M.D. Mastrandrea, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 709–754.

[19] IPCC, 2018: Global Warming of 1.5° C. An IPCC Special Report on the impacts of global warming of 1.5° C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press.

[20] National Research Council. 2011. America's Climate Choices. Washington, DC: The National Academies Press. *https://doi.org/10.17226/12781.*

[21] National Academies of Sciences, Engineering, and Medicine. 2017. Communities in Action: Pathways to Health Equity. Washington, DC: The National Academies Press. *https://doi.org/10.17226/24624.*

including technical assistance discussions with the Services regarding this rule for over a year.[22] EPA has prepared an ESA section 7(d) determination memorandum that discusses our decision to finalize this action before the consultation process is complete, which is also available in the docket for this action.[23] [24]

II. Legal Authorities To Reduce and Establish Volumes

The CAA provides EPA with several authorities to reduce or establish the nationally applicable renewable fuel volumes. In this action, as proposed, we are utilizing the cellulosic waiver authority along with the ''reset'' waiver authority to reduce the applicable volumes for 2020, 2021, and 2022 for total renewable fuel, advanced biofuel, and cellulosic biofuel. We are also utilizing our ''set'' authority to establish the 2022 applicable volume for BBD. We have also considered but declined to make reductions utilizing our ''general'' waiver authority.

This section discusses the statutory authorities, additional factors we considered due to the retroactivity or lateness of this rulemaking, additional factors related to our reconsideration of the previously finalized standards for 2020, how we are applying our authorities to establish the volumes, as well as the severability of the various portions of this final rule. A detailed summary of the comments received on EPA's legal authorities to reduce and establish volumes and our responses to those comments can be found in the Section 2 of the RTC document.

A. Authorities To Modify Statutory Volumes Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements different from the statutory volume targets and thus provided waiver provisions in CAA section 211(o)(7). In this action, we are utilizing the cellulosic waiver authority under CAA section 211(o)(7)(D) and the reset authority under CAA section 211(o)(7)(F) to reduce volumes for 2020, 2021, and 2022. We are not using our general waiver authority. In addition, while in January 2021 we sought comment on the use of general waiver authority to reduce volumes for 2020 in response to several petitions from states and obligated parties submitted during the 2020 compliance year,[25] we have determined that reductions under the general waiver authority are not necessary or appropriate in light of our decision to waive the volumes using our other authorities.

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume established under CAA section 211(o)(2)(B), then EPA must reduce the applicable volume of cellulosic biofuel to the projected volume available for that calendar year. In making this projection, EPA must take a ''neutral aim at accuracy.'' *American Petroleum Institute (API)* v. *EPA,* 706 F.3d 474, 479 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volume for each year since 2010. CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when EPA reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. EPA has used this aspect of the cellulosic waiver authority to lower the advanced biofuel and total renewable fuel volumes every year since 2014. Further discussion of the cellulosic waiver authority, and EPA's interpretation of it, can be found in the 2017 final rule.[26]

In this action, as proposed, we are utilizing the cellulosic waiver authority as required by the statute to reduce the applicable volume of cellulosic biofuel for 2020, 2021, and 2022. As described in Chapter 4 of the RIA, the projected volumes of cellulosic biofuel production for 2020, 2021, and 2022 are all significantly less than the volume targets in the statute. Therefore, the cellulosic waiver authority requires EPA to lower the cellulosic biofuel volume to the projected volume available in each year. Our interpretation of the ''projected volume available'' includes the volume of qualifying cellulosic biofuel projected to be produced or imported and available for use as transportation fuel in the U.S. in that year. Consistent with our past interpretation of the term as discussed further in Section III.B.2, it does not include cellulosic carryover RINs. We are also utilizing the cellulosic waiver authority as a basis for reductions in the total renewable fuel and advanced biofuel applicable volumes for 2022.

2. Reset Authority

The CAA provides that EPA shall modify the statutorily prescribed RFS volumes once certain triggers are met. This section discusses the statutory requirements that trigger the use of this reset authority, describes the process and criteria for such use, and explains the impact of this modification on our other waiver authorities. In this action, as proposed, we are utilizing the reset authority to modify the volume requirements for 2020, 2021, and 2022 as required by the statute and after careful consideration of the many comments received.

a. Conditions for Resetting Volume Targets

CAA section 211(o)(7)(F) sets forth EPA's authority to modify, or ''reset'' the applicable volumes once certain triggers have been met. Specifically, EPA must reset the applicable volumes for a particular category of biofuel when, under CAA section 211(o)(7)(F)(i), we waive at least 20 percent of the applicable volume requirement for such category for two consecutive years, or, under CAA section 211(o)(7)(F)(ii), we waive at least 50 percent of such applicable volume requirement for a single year. With the promulgation of the 2019 standards, these conditions have been met for three categories of biofuel: cellulosic biofuel, advanced biofuel, and total renewable fuel.[27] We describe below, for each

[22] A chronology of these interactions between EPA and the Services is available in the docket for this action. ''Technical assistance'' and ''informal consultation'' are terms used to describe aspects of ESA consultation with the Services, as detailed in the ESA Section 7 Consultation Handbook, March 1998 (available at *https://media.fisheries.noaa.gov/dam-migration/esa_section7_handbook_1998_opr5.pdf*).

[23] Section 7(d) of the ESA prohibits a federal agency from making irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would not violate ESA section 7(a)(2).

[24] EPA intends to respond to the D.C. Circuit's remands of the ESA determinations made in the 2018 and 2019 RFS rules in a separate proceeding.

[25] See 86 FR 5182 (January 19, 2021).

[26] See 81 FR 89752–89753 (December 12, 2016); see also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA,* 750 F.3d 909, 915–16 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel); *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691, 730–735 (D.C. Cir. 2017) (same); *Alon Refining Krotz Spring, Inc.* v. *EPA,* 936 F.3d 628, 662–663 (D.C. Cir. 2019) (same); *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559, 577–78 (D.C. Cir. 2019) (same).

[27] Because the statutory volumes for BBD lapsed after 2012, the reset provision, which only applies

category of biofuel, how these conditions were satisfied.

The conditions for resetting cellulosic biofuel volumes were met by the 2010 annual standard, which reduced the applicable cellulosic biofuel volume by at least 50 percent. In that rule, we waived the cellulosic biofuel applicable volume for the first time using the cellulosic waiver authority.[28] We set the cellulosic biofuel applicable volume at 6.5 million gallons for 2010.[29] This waiver resulted in an applicable volume that was 93.5 percent lower than the applicable volume requirement provided in the statute (100 million gallons), thus triggering the reset requirement under CAA section 211(o)(7)(F)(ii). However, the statute also provides that ''no such modification in applicable volumes shall be made for any year before 2016.'' CAA section 211(o)(7)(F). Therefore, although the trigger to modify the cellulosic biofuel volume target under the reset provision was met in 2010, the statute did not require a change to the applicable volumes until 2016.[30]

The conditions for resetting advanced biofuel volumes were met by the 2014 and 2015 annual standards, which reduced the advanced biofuel applicable volume by at least 20 percent for two consecutive years. For the 2014 annual standard, we waived the advanced biofuel volume for the first time.[31] We set the advanced biofuel volume at 2.67 billion gallons.[32] This represented a reduction of 28.8 percent from the applicable volume requirement provided in the statute (3.75 billion gallons). This reduction therefore triggered the first year of reductions of at least 20 percent under CAA section 211(o)(7)(F)(i). For the 2015 annual standard, we reduced the advanced biofuel applicable volume to 2.88 billion gallons.[33] This represented a reduction of 47.6 percent from the applicable volume requirement provided in the statute (5.5 billion gallons). This represented the second consecutive year for which the Administrator waived volumes by at least 20 percent, thus triggering the modification of the advanced biofuel volume under CAA section 211(o)(7)(F)(i).

The conditions for resetting total renewable fuel volumes were met by the 2018 and 2019 annual standards, which reduced the applicable total renewable fuel volume by at least 20 percent for two consecutive years. For the 2018 annual standard, we reduced the total renewable fuel volume to 19.29 billion gallons.[34] This represented a reduction of 25.8 percent from the applicable volume requirement provided in the statute (26 billion gallons). This reduction therefore triggered the first year of reductions of at least 20 percent under CAA section 211(o)(7)(F)(i). For the 2019 annual standard, we reduced the total renewable fuel volume to 19.92 billion gallons.[35] This represented a reduction of 29 percent from the applicable volume requirement provided in the statute (28 billion gallons). This represented the second consecutive year for which the Administrator waived volumes by at least 20 percent, thus triggering the modification of the total renewable fuel volume under CAA section 211(o)(7)(F)(i).

b. Factors That Must Be Analyzed

In resetting the statutory volumes, EPA must comply with the processes, criteria, and standards set forth in CAA section 211(o)(2)(B)(ii). That provision provides that the Administrator shall, in coordination with the Secretary of Energy and the Secretary of Agriculture, determine the applicable volumes of each biofuel category specified based on a review of implementation of the program during the calendar years specified in the table, and an analysis of the impact of:

- the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
- the impact of renewable fuels on the energy security of the United States;
- the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
- the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
- the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
- the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

While the statute requires that EPA base its determination on an analysis of these factors, it does not establish any numeric criteria, require a specific type of analysis (such as quantitative analysis), or provide guidance on how EPA should weigh the various factors. Additionally, we are not aware of anything in the legislative history of EISA that provides authoritative guidance on these issues. Thus, as the Act ''does not state what weight should be accorded to the relevant factors,'' it ''give[s] EPA considerable discretion to weigh and balance the various factors required by statute.'' [36] We received comments on this issue, with some commenters suggesting that we should give more weight to certain factors than others; our responses can be found in Section 2 of the RTC document.

Additionally, we also have authority to consider other factors, including implied authority to consider factors that inform our analysis of the statutory factors, as well as explicit authority to consider ''the impact of the use of renewable fuels on other factors. . . .'' [37] Accordingly, we have considered several other factors, including the intertwined nature of compliance with the 2020–2022 standards, the size of the carryover RIN bank,[38] how the entirely retroactive nature of the 2020 and 2021 standards as compared to the partially prospective nature of the 2022 annual and supplemental standards affects the feasibility of compliance,[39] the supply of qualifying renewable fuels to U.S.

to 2016 and subsequent years, does not apply to BBD.

[28] 75 FR 14670 (March 26, 2010).

[29] 75 FR 14675.

[30] We note that all subsequent annual rules have also waived the cellulosic biofuel volume by more than 50 percent.

[31] 80 FR 77420 (December 14, 2015).

[32] *Id.*

[33] *Id.*

[34] 82 FR 58486 (December 12, 2017).

[35] 83 FR 63704 (December 11, 2018).

[36] *Nat'l Wildlife Fed'n* v. *EPA,* 286 F.3d 554, 570 (D.C. Cir. 2002); accord *Riverkeeper, Inc.* v. *United States EPA,* 358 F.3d 174, 195 (2d Cir. 2004); *BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 802 (6th Cir. 1995); see also Cal. by *Brown* v. *Watt,* 668 F.2d 1290, 1317 (D.C. Cir. 1981) (''A balancing of factors is not the same as treating all factors equally. The obligation instead is to look at all factors and then balance the results. The Act does not mandate any particular balance, but vests the Secretary with discretion to weigh the elements. . . .'').

[37] CAA section 211(o)(2)(B)(ii)(VI).

[38] The first two factors also inform our analysis of the statutory factor ''review of the implementation of the program.'' CAA section 211(o)(2)(B)(ii).

[39] The third factor (how the standards affect the feasibility of compliance) also informs our analysis of the statutory factor ''the expected annual rate of future commercial production of renewable fuels.'' CAA section 211(o)(2)(B)(ii)(III).

consumers,[40] soil quality,[41] and environmental justice.[42]

c. Impact on Other Statutory Authorities To Waive Volumes

Our use of the reset authority in this action does not preclude our legal authority to waive volumes under the other waiver authorities. Nothing in the CAA suggests that once the volumes are reset they cannot be modified further, or that the reset authority cannot be used in conjunction with other waiver authorities such as the cellulosic waiver authority.[43]

d. Use of the Reset Authority in This Action

For cellulosic biofuel for 2020, 2021 and 2022, we believe that the appropriate volume after analyzing the various factors is the projected volume available in each of those years. For each year, this volume is equivalent to the resulting volume after exercise of the cellulosic waiver authority. Thus, these volumes are justified under both the cellulosic waiver authority and the reset authority.

For advanced biofuel and total renewable fuel, we are establishing volumes equal to the actual volumes of such fuels available in 2020 and 2021 under the reset authority alone. We recognize that the resulting volumes are lower than the minimum volumes that could result from exercising the cellulosic waiver authority; however, as we explain further in Section III, we do not believe that the lowest volumes permissible under the cellulosic waiver authority are appropriate based upon our consideration of the reset factors.[44] In other words, larger reductions in advanced biofuel and total renewable fuel are warranted under the reset authority than could be provided utilizing the maximum reductions permissible under the cellulosic waiver authority alone. For 2022, we are utilizing both the reset authority and the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel standards by the same amount as the reduction in cellulosic biofuel. This results in implied non-cellulosic advanced biofuel and conventional renewable fuel volumes equal to the implied statutory volumes. This also represents the maximum permitted reduction under the cellulosic waiver authority.[45]

In Section III and throughout the RIA, we set forth our policy and technical rationale for the 2020, 2021, and 2022 volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel. Our analysis is framed in terms of the statutory factors that the reset authority requires us to consider, along with the considerations for retroactive and late rules identified by the D.C. Circuit. Since this analysis subsumes our policy and technical rationale for exercising the cellulosic waiver authority as well, we are not providing a separate analysis for the application of the cellulosic waiver authority.

3. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator by his own initiative. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that (1) implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply.

EPA received several requests for use of the general waiver authority for the 2020 standards from stakeholders concerned about the impacts on the fuels markets resulting from the COVID–19 pandemic. These included requests from the governors of multiple states alleging that the criteria for the general waiver authority were satisfied and that lowering the required volumes for 2020 was appropriate. In January 2021, we published a notice in the **Federal Register** seeking comment on these requests.[46] We did not propose to and are not modifying the 2020 volumes utilizing the general waiver authority in this action. In lieu of doing so, we are revising the 2020 volumes under both the cellulosic waiver authority and the reset authority to the volumes actually used in that year. This rule thus addresses many of the concerns raised in the general waiver petitions, including the shortfall in RIN generation in 2020, uncertainty regarding SREs following the Tenth Circuit's decision in *Renewable Fuels Association (RFA)* v. *EPA,* and the hurdles those may present to obligated parties' compliance.

To the extent that EPA's independent action to reduce statutory volumes under both the cellulosic waiver authority and the reset authority satisfies the petition requests, those requests are now practically moot. To the extent any petition seeks differing reductions in applicable volumes than are set forth in this final rule, we believe the reductions we are finalizing are appropriate, and we are denying those requests. As discussed in Section III, the modified 2020 volumes reflect the volumes actually used in the U.S. in 2020. Thus, compliance with these modified volumes will not result in severe economic harm, and granting the general waiver petitions is not needed to avert such harm. As such, EPA is denying all pending requests to lower the 2020 volumes based on severe economic harm. Specifically, we are denying the petitions to waive the 2020 standards on the basis of severe economic harm from the following states: Louisiana, Oklahoma, Texas, Utah, Wyoming, Pennsylvania, and Montana. We are also denying petitions received from small refineries suggesting EPA waive volumes for 2019 and 2020 utilizing the general waiver authority under a finding of severe economic harm. These requests sought reductions in individual obligations utilizing the general waiver authority under a finding of severe economic harm. For the reasons further discussed in Section 13 of the RTC document, we do not think that the statute should be read to allow for individual reductions in renewable volume obligations (RVOs) under the general waiver authority, nor do we believe that the petitioners have

[40] The fourth factor (supply of renewable fuels) is based on our analysis of this same statutory factor (the expected annual rate of future commercial production of renewable fuel), as well as of downstream constraints on biofuel use, including the statutory factors relating to infrastructure and costs. CAA section 211(o)(2)(B)(ii)(III)–(V).

[41] Soil quality is closely tied to water quality and is also relevant to the impact of renewable fuels on the environment more generally. See CAA section 211(o)(2)(B)(ii)(I).

[42] Environmental justice involves consideration of the impact of renewable fuels on several factors, including environmental and cost factors. See CAA section 211(o)(2)(B)(ii)(I), (V). This and the other non-enumerated factors are also relevant under the statutory factor ''the impact of the use of renewable fuels on other factors. . . .'' CAA section 211(o)(2)(B)(ii)(VI).

[43] See *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Intern., Inc.,* 534 U.S. 124, 143–44 (2001) (holding that when two statutes are capable of coexistence and there is not clearly expressed legislative intent to the contrary, each should be regarded as effective).

[44] Under the cellulosic waiver authority, when EPA reduces the volume of cellulosic biofuel, EPA may reduce the advanced biofuel and total renewable fuel volumes by the same or a lesser amount.

[45] This is also consistent with our authority to apply equal reductions to the volumes of advanced biofuel and total renewable fuel under the cellulosic waiver. CAA(o)(7)(D)(i), see also 85 FR 7016, 7047–7048 (February 6, 2020).

[46] 86 FR 5182 (January 19, 2021). Comments on these requests are available in the docket for that notice, EPA–HQ–OAR–2020–0322, and the docket for this action.

demonstrated severe economic harm as required by the statute.

B. Authority To Establish BBD Volumes

EPA has established the BBD requirement under CAA section 211(o)(2)(B)(ii) since 2013 because the statute only provided BBD volumes through 2012. Thus, EPA is establishing an applicable volume for BBD for 2022 under this authority, which we term the ''set'' authority.[47] As discussed in prior annual rulemakings, EPA is to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on an analysis of the same statutory factors enumerated above for ''resetting'' volumes for the other fuel categories.[48] The statute also requires that the BBD volume be set at or greater than the 1.0 billion gallon volume requirement for 2012, but does not provide any other numerical criteria that EPA is to consider. We are establishing the BBD volume for 2022 at 2.76 billion gallons as proposed. Our policy and technical rationale for this volume is also set forth in Section III and Chapter 10 of the RIA.

C. Considerations for Retroactive and Late Rulemaking

In this rulemaking, we proposed and are finalizing several late or retroactive standards. EPA has in the past also missed statutory deadlines for promulgating RFS standards. In those cases, the D.C. Circuit found that EPA retains authority to promulgate annual standards retroactively, so long as EPA exercises this authority reasonably.[49] In doing so, EPA must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[50] Even if the rule does not operate retroactively, but is nonetheless promulgated after the statutory deadline, EPA must consider and mitigate the burdens on obligated parties associated with a delayed rulemaking.[51] In upholding EPA's retroactive standards for 2014 and 2015 in *ACE,* for example, the court considered several specific factors, including the availability of RINs for compliance, the amount of lead time and adequate notice for obligated parties, and the availability of compliance flexibilities. Additionally, the court separately addressed rulemakings that were late (*i.e.,* those issued after the statutory deadline) but were nonetheless not retroactive, emphasizing in that context the amount of lead time and adequate notice for obligated parties.[52]

In this rulemaking, we are exercising the reset authority after the statutory deadline of December 11, 2019 (*i.e.,* one year after the promulgation of the 2019 final rule, which triggered the reset obligation for total renewable fuel).[53] We are also exercising our set authority for the 2022 BBD volume after the statutory deadline of October 31, 2020. We are also promulgating the 2020, 2021, and 2022 standards after their statutory deadlines of November 30, 2019, 2020, and 2021 respectively.[54] The 2020 and 2021 standards are retroactive as they apply to gasoline and diesel fuel produced or imported in 2020 and 2021. The 2022 standards, which apply to gasoline and diesel fuel produced or imported in 2022, are partially retroactive and partially prospective. We discuss in detail the considerations for late or retroactive rulemaking for each of these requirements further in Section III.

In addition, in responding to the *ACE* remand of the 2016 annual rule, EPA is promulgating a supplemental standard for 2022.[55] We are finalizing this supplemental standard after the statutory deadline for the 2016 standards (November 30, 2015). As with the other 2022 standards, this standard will also be partially retroactive and partially prospective. We further discuss our response to the *ACE* remand in Section IV.

D. Considerations in Revisiting an Established RFS Standard

We are revising the previously finalized 2020 standards in this rulemaking as proposed and after considering the many comments received both for and against doing so. We generally have authority to reconsider and revise our rulemakings, so long as we use the same procedures to amend a rule as we used to promulgate it in the first instance and set forth good reasons for the reconsideration.[56] Our authority to revise RFS annual rules specifically is further buttressed by the statutory structure, under which Congress created a prospective regulatory scheme,[57] but expressly contemplated the possibility for adjustments based on unanticipated circumstances through waiver authorities.[58] This understanding of our authority is also long-standing; we previously revised the 2011 and 2013 annual rules and have also adjudicated on the merits numerous petitions to revise other annual rules.[59] We believe our power to reconsider, as with our power to promulgate a rule in the first instance, remains extant even where the rule operates retroactively or is promulgated after the statutory deadline, so long as we reasonably consider and mitigate the burdens associated with a retroactive or delayed rulemaking as described above.

Despite our legal authority to reconsider past RFS standards, we believe that we generally should not reconsider such standards. Reconsideration can impose costs on regulatory certainty and unduly disrupt market expectations created by previously promulgated standards. This may be particularly so where the effects of reconsideration are retroactive, and such retroactive rules must, as discussed above, consider and mitigate burdens on obligated parties. Moreover, in the 2020 final rule itself, we expressly stated that we did not intend,

[47] The applicable volume for BBD for 2021 was established in the 2020 annual rulemaking. 85 FR 7016 (February 6, 2020).

[48] 85 FR 7016, 7047–7048 (February 6, 2020).

[49] *Americans for Clean Energy* v. *EPA,* 864 F.3d 691, 720 (D.C. Cir. 2017) (*ACE*); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *Nat'l Petrochemical & Refiners Ass'n* v. *EPA,* 630 F.3d 145, 154–58 (D.C. Cir. 2010) (*NPRA*).

[50] *NPRA,* at 154–58 (D.C. Cir. 2010).

[51] *ACE,* 864 F.3d 691, 718 (D.C. Cir. 2017).

[52] *Id.* at 721.

[53] This was the deadline for resetting total renewable fuel volumes. The deadlines for resetting advanced biofuel and cellulosic biofuel volumes passed earlier.

[54] These are also the deadlines for exercising the cellulosic waiver authority for those years, which we have also missed.

[55] We also intend to propose a supplemental standard for 2023 in a subsequent action.

[56] See *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42, (1983) (''an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances); *Federal Communications Commission (FCC)* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (recognizing that the Administrative Procedure Act ''makes no distinction . . . between initial agency action and subsequent agency action undoing or revising that action''); *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101 (2015) (agencies may amend rules by using ''the same procedures when they amend . . . a rule as they used to issue the rule in the first instance''); 5 U.S.C. 553(e) (''Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'').

[57] See, *e.g.,* CAA section 211(o)(2)(B)(i) (statutory volume table prospectively determined by Congress), (o)(3)(B) (requirement for EPA to prospectively establish renewable fuel standards for the following year by Nov. 30 of the prior year).

[58] CAA section 211(o)(7).

[59] See 79 FR 25025 (May 2, 2014) (direct final rule adjusting the 2013 cellulosic biofuel applicable volume and percentage standard, after the compliance year was complete), 80 FR 77420 (December 14, 2015) (rescinding the 2011 cellulosic biofuel standard for utilizing methodology invalidated by the court); Denial of AFPM Petition for Waiver of 2016 Cellulosic Biofuel Standard, available at: *https://www.epa.gov/sites/default/files/2017-01/documents/afpm-rfs-petition-decision-ltr-2017-01-17.pdf;* 77 FR 70752 (November 27, 2012) (notice of denial of requests for a waiver of the renewable fuel standards for 2012–2013).

at that time, to revisit that rulemaking and subsequently adjust the standards.[60]

At the same time, reconsideration can also address the impacts of unexpected actions and market disruptions that occur after the standards have been set and that lead to high costs and uncertainty over future standards. In this action we are reconsidering and revising the 2020 standards in response to several unanticipated and exceptional events that have occurred since the promulgation of the 2020 standards and that have had direct and significant impacts on the fuels market and the ability of obligated parties to comply. We believe these events have created the unusual situation where retroactive reconsideration and revision of the 2020 standards is warranted. We discuss these events and our rationale for revising the 2020 standards further in Section III.C.[61]

E. Severability

The following portions of this rulemaking are mutually severable from each other, as numbered: (1) the volumes and percentage standards for 2020, 2021, and 2022; (2) the reaffirmation of the modified definitions in the percentage standard formulas regarding the projection of exempt gasoline and diesel fuel volumes discussed in Section V.B; (3) the provisions for biointermediates discussed in Section VII; and (4) the regulatory amendments discussed in Section VIII. Each of the regulatory amendments in Section VIII is also severable from all the other regulatory amendments. If any of the above portions is set aside by a reviewing court, we intend the remainder of this action to remain effective. For instance, if a reviewing court sets aside the modified definitions in the percentage standard formula, we intend the remainder of the rule (including the 2020–2022 volumes and percentage standards, biointermediates provisions, and other regulatory amendments) to remain effective.[62]

We also intend for the volumes and percentage standards for 2020–2022 to be severable from the 2022 supplemental volume and percentage standard such that if a court were to set aside the 2022 supplemental volume and percentage standard, the volumes and percentage standards for 2020–2022 would remain in place. Our authority and rationale for establishing the 2020–2022 volumes and standards is independent of those for establishing the supplemental volume and standard, and we do not believe that it would be appropriate to further delay implementation of the former if a court were to find defects in the latter. However, if the reverse were to occur, and a court were to set aside the 2020–2022 volumes and percentage standards, we would intend for the 2022 supplemental standard to be set aside along with the 2020, 2021, and 2022 volumes and percentage standards. This is because we do not find it appropriate for the 2022 supplemental standard to exist without the standard to which it is supplemental, *i.e.,* the 2022 total renewable fuel standard. As a practical matter, we also expect obligated parties to comply with the supplemental standard in the same compliance demonstration as the rest of the 2022 standards, as discussed further in Section IV.C.

III. Volume Requirements

In this rule we are establishing 2020, 2021, and 2022 cellulosic biofuel, advanced biofuel, and total renewable fuel volumes under the reset authority.[63] We are establishing the 2022 BBD volume under our set authority. The volumes we are establishing in this rule are generally consistent with the proposed volumes, with relatively minor adjustments to reflect updated data since the time of the proposed rule. As required by both the reset and set authorities, we have analyzed the statutory factors under CAA section 211(o)(2)(B)(ii). We have also coordinated with the Secretary of Energy and the Secretary of Agriculture, including through the interagency review process, and their input is reflected in this final rule.

In Section III.A, we summarize our analyses as they apply to each of three component categories of biofuel: cellulosic biofuel, non-cellulosic advanced biofuel, and conventional renewable fuel.[64] In Section III.B we discuss the relationship between the volume requirements for all three years as part of our review of the implementation of the program. In Sections III.C through G, we describe the volumes for 2020, 2021, and 2022, along with our supporting assessment of the statutory factors. In Section III.H, we summarize the fuel costs and energy security benefits of the volumes. Our preamble discussion provides a high-level, narrative summary of the statutory factors, focusing on the factors that we deem most appropriate. A more detailed discussion of all the statutory factors is set forth in the RIA.

A. EPA's Assessment of the Statutory Factors for Each Component Category of Biofuel

The volumes for 2020, 2021, and 2022 we are finalizing in this rule are based on our analyses of the statutory factors listed in CAA section 211(o)(2)(B)(ii). This section summarizes the results of our analyses. We received numerous comments on the supporting analyses presented in the Draft RIA of the proposed rule. The summaries presented here reflect these comments, where appropriate, as well as updated data since the time of the proposed rule. Further detail on our analyses of the statutory factors for each of the biofuel types can be found in the RIA. Additionally, a summary of the comments received on the analyses presented in the proposed rule can be found in the RTC document.

1. Cellulosic Biofuel

In EISA, Congress established escalating targets for cellulosic biofuel, reaching 16 billion gallons in 2022. After 2015, 84 percent of the growth in statutory volume of total renewable fuel was intended to come from cellulosic biofuel.[65] This indicates that Congress

[60] See Response to Comments at 173 (Docket Item No. EPA–HQ–OAR–2019–0136–2157).

[61] EPA also received two petitions from the American Fuel & Petrochemical Manufacturers (AFPM) and API in early 2020 seeking reconsideration of the 2020 annual rule under CAA section 307(d)(7)(B) in light of the *RFA* decision and its impact on EPA's projections of SREs in calculating the percentage standards. These petitions are available in the docket. See AFPM, *Petition for Administrative Reconsideration of Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes, 85 FR 7,016 (Feb. 6, 2020)* (Mar. 24, 2020); API, *Petition for Reconsideration of the RFS 2020 Rule, EPA–HQ–OAR–2019–0136* (April 6, 2020). In the proposed rule, we did not determine whether these petitions met the standards for reconsideration under CAA section 307(d)(7)(B). Nonetheless, for the reasons described in this preamble, we believe it is appropriate to reconsider the 2020 standards, and we have provided the procedural process (*i.e.,* a CAA section 307(d) rulemaking to reconsider the 2020 standards) requested in the petitions.

[62] We recognize that we apply the modified definitions in calculating the percentage standards. However, as we explain further in Section V.B, even were we to use the prior definitions relating to SREs in the standard-setting formula, we would still project the same exempt volume of zero gallons. As a result, the application of the modified definitions does not affect and is severable from the percentage standards.

[63] As we explained in Section II.D, some of the volumes we are establishing in this action are also independently justified under the cellulosic waiver authority, but the policy and technical analysis for our exercise of the cellulosic waiver is subsumed under our analysis of the reset factors.

[64] Cellulosic biofuel corresponds directly to the statutory biofuel category. Cellulosic biofuel plus non-cellulosic advanced biofuel constitute the statutory advanced biofuel category. Finally, advanced biofuel plus conventional renewable fuel constitute the statutory total renewable fuel category. See CAA section 211(o)(2)(B)(i)(I)–(IV).

[65] From 2015 through 2022 the statutory target for cellulosic biofuel increases by 13.0 billion gallons,

intended the RFS program to provide a significant incentive for cellulosic biofuels and that the focus for years after 2015 was to be on cellulosic. Consistent with this intent, our assessment of the statutory factors suggests that cellulosic biofuels have multiple benefits, including the potential for very low lifecycle GHG emissions that meet or exceed the 60 percent GHG reduction threshold. Further, none of the feedstocks expected to be used to produce cellulosic biofuels through 2022 are specifically produced to be used as feedstocks for cellulosic biofuel production.

Compressed natural gas and liquid natural gas (CNG/LNG) derived from biogas represents the vast majority of the cellulosic biofuel volume projected through 2022. It is generally produced from waste materials or residues (*e.g.,* through biogas collection from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters) and thus is not expected to affect the conversion of wetlands, ecosystems, and wildlife habitat, soil and water quality, the price and supply of agricultural commodities, or food prices. In some situations, such as at larger landfills, CNG/LNG derived from biogas may also be able to be produced at a price comparable to fossil-based natural gas. Despite this relatively low cost of production, the combination of the high cellulosic RIN price and the significant volume potential for CNG/LNG derived from biogas is expected to increase the price of gasoline and diesel by about $0.01 per gallon.[66]

A small amount of liquid cellulosic biofuel was produced in 2020 and 2021 and efforts continue to develop and commercialize various technologies. Many of their feedstocks (including agricultural residues and separated MSW) have limited uses in other markets.[67] Because of this, using these feedstocks to produce liquid cellulosic biofuel is not expected to have significant adverse impacts related to several of the statutory factors, including the conversion of wetlands, ecosystems and wildlife habitat, soil and water quality, the price and supply of agricultural commodities, and food prices.

However, the cost of producing liquid cellulosic biofuel is high. These high costs are generally the result of low yields (*e.g.,* gallons of fuel per ton of feedstocks) and the high capital costs of liquid cellulosic biofuel production facilities. In the near term (through 2022), the production of these fuels is likely to be dependent on relatively high cellulosic RIN prices (in addition to incentives from state-level programs such as California's low carbon fuel standard (LCFS) program) to be economically competitive with petroleum-based fuels.

2. Non-Cellulosic Advanced Biofuel

The volume targets established by Congress also anticipated significant growth in advanced biofuel beyond what is needed to satisfy the cellulosic biofuel standard. The statutory target for advanced biofuel in 2022 (21 billion gallons) allows for up to 5 billion gallons of non-cellulosic advanced biofuel to be used towards the advanced biofuel volume target. In practice, the vast majority of non-cellulosic advanced biofuel in the RFS program has been BBD, with relatively small volumes of sugarcane ethanol and other advanced biofuels. Some of the statutory factors assessed by EPA suggest that the targets for non-cellulosic advanced biofuel established by Congress, or even higher volumes, are still appropriate. Notably, all advanced biofuels have the potential to provide significant GHG reductions as they are required to achieve at least 50 percent GHG reductions relative to the petroleum fuels they displace. Some types of advanced biofuels, such as biodiesel and renewable diesel produced from fats, oils, and greases, have been determined to provide even greater reductions than the 50 percent threshold.

Because the vast majority of non-cellulosic advanced biofuels supplied to the U.S. historically have been advanced biodiesel and renewable diesel, this summary focuses on the impacts of these fuels. Advanced biodiesel and renewable diesel together comprise 95 percent or more of the total supply of non-cellulosic advanced biofuel over the last several years and are expected to supply all of the increase in advanced biofuel through 2022. High domestic production capacity and availability of imports indicate that volumes of non-cellulosic advanced biofuel in 2022 are likely to exceed the implied statutory targets. Similarly, the feedstocks used to make advanced biodiesel and renewable diesel (*e.g.,* soy oil, canola oil, and corn oil, as well as waste oils such as white grease, yellow grease, trap grease, poultry fat, and tallow) currently exist in sufficient quantities globally to supply these increasing volumes. These feedstocks have many existing uses, such that significant increases in volumes used for biofuels may potentially require replacement in other markets with suitable substitute feedstocks such as imported vegetable oils (including palm oil). However, there is also potential for some ongoing growth in the production of these feedstocks. As such, higher volume requirements for non-cellulosic advanced biofuel may provide benefits to the rural economy, such as increased domestic employment in the biofuels industry and increased income for biofuel feedstock producers.

However, some of the factors assessed would support lower volumes of advanced biofuel. For instance, as described in Chapter 9 of the RIA, the cost of biodiesel and renewable diesel is significantly higher than petroleum-based diesel fuel and is expected to remain so through 2022. These high costs are expected to result in higher fuel prices, especially for consumers of finished fuels with relatively low renewable content (*e.g.,* most diesel fuel). This in turn is expected to increase the cost to transport goods. Even if biodiesel and renewable diesel blends are priced similarly to petroleum diesel fuel at the pump after accounting for the relevant Federal and state incentives (including the RIN value), society as a whole nevertheless bears their full costs. Moreover, the fact that sufficient feedstocks exist to produce increasing quantities of advanced biodiesel and renewable diesel does not mean that those feedstocks are readily available or could be diverted to biofuel production without adverse consequences. As described in Chapter 5 of the RIA, we expect only limited quantities of fats, oils, and greases and distillers corn oil to be available for increased biodiesel and renewable diesel production in future years. We expect that the primary feedstock available to support significant increases in advanced biodiesel and renewable diesel through 2022 will be soybean oil and other vegetable oils whose primary markets are for food. Increased demand for soybean oil could potentially lead to diversion of feedstocks from food and other current uses in addition to further incentivizing

from 3.0 billion gallons to 16.0 billion gallons. During this same time period the statutory target for total renewable fuel increases by 15.5 billion gallons, from 20.5 billion gallons to 36.0 billion gallons. Thus, cellulosic biofuel was expected to account for 84 percent (13.0 billion gallons/15.5 billion gallons) of the total renewable fuel increase.

[66] See Chapters 5.1.2.2 and 9.4.3.2 of the RIA for a further discussion of the expected impact of RINs generated for CNG/LNG derived from biogas on the transportation fuel market.

[67] One potential exception is corn kernel fiber. Corn kernel fiber is a component of distillers grains, which is currently sold as animal feed. Depending on the type of animal to which the distillers grain is fed, corn kernel fiber removed from the distillers grain through conversion to cellulosic biofuel may need to be replaced with additional feed.

increased soybean crushing and soybean production and increased imports of soybean oil. It could also potentially lead to increased cultivation of other vegetable oils such as canola or palm oil as a substitute for diverted soybean oil. Increased vegetable oil production in the U.S. and abroad in turn could result in greater conversion of wetlands, adverse impacts on ecosystems and wildlife habitat, adverse impacts on water quality and supply, and increased prices for agricultural commodities and food prices.

3. Conventional Renewable Fuel

Some of the statutory factors assessed for conventional renewable fuel favor the implied statutory volume (15 billion gallons) or higher volumes, while other factors favor lower volumes. While conventional renewable fuels are generally required by EISA to achieve 20 percent GHG reductions relative to the petroleum fuels they displace, some conventional renewable fuel facilities exceed this threshold. Notably, EPA has developed an expedited petition process for ethanol production facilities using more efficient process technologies.[68] The statute, however, also contains grandfathering provisions exempting any facility that had begun construction on or before December 19, 2007, from this requirement, so not all producers of conventional renewable fuels meet or are required to meet the 20 percent GHG reduction threshold.[69]

The vast majority of conventional renewable fuel that has been supplied to the U.S. is corn ethanol. Domestic production capacity for corn ethanol exceeds 16 billion gallons. Production of corn ethanol in the U.S. reached its historical peak of 16.1 billion gallons in 2018.[70] Higher volumes of conventional renewable fuel production could result in more domestic jobs in the biofuels industry. At the same time, there are also significant volumes of palm biodiesel and renewable diesel that are produced internationally that could qualify as conventional renewable fuel under the grandfathering provisions of the RFS program. In the past, small volumes of grandfathered biodiesel and renewable diesel have been supplied to the U.S. and contributed to satisfying the RFS requirements.[71]

Some of the analyses we conducted support lower volumes of conventional renewable fuel. As with soy biodiesel, increased corn production in the U.S. could result in greater conversion of wetlands, adverse impacts on ecosystems and wildlife habitat, adverse impacts on water quality and supply, and increased prices for agricultural commodities and food prices. Furthermore, there are constraints on ethanol use. The market has not achieved 15 billion gallons of actual use of conventional renewable fuel in any year, including those in which the RFS standards included an implied conventional renewable fuel volume of 15 billion gallons. This was due to various factors, including limitations on ethanol use above the E10 blendwall, strong export markets for domestically-produced ethanol, the effect of SREs in depressing the effective RFS standards, and use of advanced biodiesel and renewable diesel, buoyed by its tax subsidy and other incentive programs such as California's LCFS program to meet the implied conventional portion of the total renewable fuel requirement.

While the use of ethanol as E10 has been, and continues to be, economical for refiners and blenders, the use of E10 alone has not been sufficient to achieve 15 billion gallons of ethanol use due to declining gasoline demand. The RFS program, along with the many other federal, state, local, and private incentive programs (*e.g.,* the Department of Agriculture's (USDA's) Biofuels Infrastructure Partnership Program and Higher Blends Infrastructure Incentive Program), have had limited success in inducing the use of higher-level ethanol blends. As a result, growth in the nationwide average gasoline ethanol concentration has virtually stagnated as the market reached the E10 blendwall. While the use of higher-level ethanol blends has increased since 2011, that growth has been small compared to prior growth in the use of E10 and non-ethanol biofuels.[72] We do not anticipate that use of higher-level ethanol blends through 2022 will increase rapidly enough to result in significantly greater volumes of ethanol consumption in the U.S., even with the incentives created by the RFS program and other incentive programs. Excess ethanol production has generally been directed to exports in recent years rather than selling greater volumes of E15 or E85 domestically. We expect these trends in exports to continue given international demand for ethanol.

Total demand for gasoline was lower in 2020 and 2021 and is expected to remain lower in 2022 relative to the volume of gasoline consumed in 2017–2019 according to data collected by EIA, which will limit the volume of ethanol used as E10.[73] Most notably, the COVID–19 pandemic caused a significant fall in gasoline demand and sales of E10 starting in 2020. We expect, therefore, that maintaining the implied 15 billion gallon statutory volume target for conventional renewable fuel going forward would require that volumes of biodiesel and renewable diesel (either conventional or advanced)—which are the least costly alternative biofuels to corn ethanol blended at concentrations greater than E10—increase to compensate for the limitations on corn ethanol use.[74]

Such expected increases in biodiesel and/or renewable diesel are associated with potentially significant adverse impacts. For instance, we project that much of this biodiesel and renewable diesel would be imported, limiting the potential positive impacts on the domestic rural economy. Further, these fuels could be sourced from grandfathered facilities that are not required by EPA's regulations to achieve any GHG reductions relative to petroleum fuels. If imported biodiesel and renewable diesel were to increase, we would expect either an increase in the use of petroleum fuels from countries that previously used these fuels, or, alternatively, an expansion of palm oil production to produce biodiesel and renewable diesel, likely resulting in additional foreign land being converted to cropland for the production of palm oil. Were such international land-use change to occur, there would very likely be significant

[68] EPA has developed an ''Efficient Producer Petition Process,'' which encourages adoption of efficiency improvements in new ethanol facilities by expediting petition review and approval. Existing EPA estimates for corn starch ethanol produced in 2022 using a dry mill process and natural gas fired process heat range from a 42 percent to a 17 percent reduction over baseline gasoline, depending on the technologies used at the production facility. See the RIA for the Renewable Fuel Standard Program (RFS2): Final Rule.

[69] See CAA section 211(o)(2)(A)(i). According to data from 2021, approximately 80% of all corn ethanol generated RINs using a grandfathered pathway while approximately 20% of all corn ethanol generated RINs using a pathway required to meet or exceed the 20% GHG reduction threshold.

[70] Energy Information Administration (EIA) Monthly Energy Review.

[71] Use of grandfathered biodiesel and renewable diesel reached a maximum of 157 million gallons in 2016. Since 2018, use of grandfathered biodiesel and renewable diesel has been very small (less than 1 million gallons each year). See Chapter 1.6 of the RIA.

[72] Since EPA granted E15 a CAA 211(f)(4) waiver in 2011 allowing E15 sales, those sales have increased slowly but steadily, as described further in Chapters 1 and 5.5 of the RIA.

[73] EIA's Monthly Energy Review (MER) for February 2022 estimates gasoline consumption of 123.7 billion gallons in 2020 and 135.0 billion gallons in 2021, while the January 2022 Short-Term Energy Outlook (STEO) projects 138.9 billion gallons in 2022. The MER reported gasoline consumption in 2017–2019 at 143.0–142.7 billion gallons annually.

[74] See Chapter 2 of the RIA for our projections of biofuels that will be supplied to satisfy the volume requirements in each year.

adverse impacts on the environment, which may include impacts on air wetlands, ecosystems and wildlife habitats, air quality, water quality, water supply, and GHG emissions.

B. Interactions Between the RFS Annual Volumes

In resetting the volumes, EPA must review the implementation of the program as required by CAA section 211(o)(2)(B)(ii). In conducting this review, we have completed a detailed assessment of the RFS program, as well as renewable fuel production and use more generally, since the beginning of the RFS program. This review is set forth at length in Chapter 1 of the RIA and in the RTC document. In this section and elsewhere in the preamble, we focus on specific aspects of our review as we deem appropriate.

In our review, we have carefully considered the carryover RIN bank [75] and carryforward deficits, which are two compliance mechanisms that have been historically important to the implementation of the RFS program and that we expect to continue to play a key role. Specifically, the RFS regulations contain provisions that allow an obligated party to satisfy their RFS obligations for a given year by using up to 20 percent of RINs generated in the previous year.[76] Similarly, the RFS regulations also allow an obligated party to carry forward a compliance deficit from one year to the next, provided the party meets their full RFS obligations in the following year.[77] These provisions operate such that any excess RINs generated in one year, or any RIN deficits, can impact the market for RINs and renewable fuels in the next year. As such, compliance with the RFS standards for one year is inherently intertwined with compliance for the prior year. Section III.B.1 below discusses the projected volume of carryover RINs (net of carryforward deficits) that will be available for use towards compliance with the 2020, 2021, and 2022 standards. We also evaluate whether we should set the 2020, 2021, and 2022 volumes at levels that would intentionally reduce the size of the carryover RIN bank, and we find that this would not be appropriate. Section III.B.2 then addresses some special considerations regarding cellulosic carryover RINs, and we also conclude that it would not be appropriate to intentionally draw down the bank of cellulosic carryover RINs by including them in the cellulosic biofuel volume requirement.

In reviewing the implementation of the program, we also recognize the difference between the ability of retroactive versus prospective volume requirements to affect renewable fuel use. As we explained in Section II, the 2020 and 2021 standards will be entirely retrospective, while the 2022 standards will apply prospectively for the remainder of 2022. In Section III.B.3 below, we explain that the retroactive 2020 and 2021 standards will not affect renewable fuel use in 2020 and 2021, respectively, but we do expect the somewhat prospective 2022 standards to significantly affect renewable fuel use in 2022. Given this dynamic, we believe that higher, market-forcing renewable fuel volumes should occur in 2022 as opposed to 2020 or 2021.

1. Treatment of Carryover RINs

Consistent with our approach in recent annual rules and the proposed rule, we have considered the availability and role of carryover RINs in setting the volume requirements for 2020, 2021, and 2022. In general, we have authority to consider the size of the carryover RIN bank in deciding whether and to what extent to exercise any of our discretionary waiver authorities.[78] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE.*[79]

As noted in past RFS annual rules, carryover RINs are a foundational element of the design and implementation of the RFS program.[80] A bank of carryover RINs is extremely important in providing a liquid and well-functioning RIN market upon which success of the entire program depends, and in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace.[81] Carryover RINs enable parties ''long'' on RINs to trade them to those ''short'' on RINs instead of forcing all obligated parties to comply through physical blending. Carryover RINs also provide flexibility and reduce spikes in compliance costs in the face of a variety of unforeseeable circumstances—including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel—that could limit the availability of RINs.

Just as the economy as a whole is able to function efficiently when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program is able to function when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be too few RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could result in deficits and/or noncompliance by parties without RIN reserves. Moreover, because carryover RINs are individually and unequally held by market participants, a small carryover RIN bank may negatively impact the RIN market,

[75] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid for obligated parties to show compliance for 12 months as of the date of generation. EPA implemented this requirement through the use of RINs, which are generated for the production of qualifying renewable fuels. Obligated parties can comply by blending renewable fuels themselves, or by purchasing the RINs that represent the renewable fuels from other parties that perform the blending. There are different ''D'' codes representing the different RFS standards that the various renewable fuels can be used to comply with. (*e.g.,* D3 represents cellulosic biofuel that can be used to comply with the cellulosic biofuel standard.) RINs can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although our regulations limit the use of these carryover RINs to 20 percent of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, vintage 2020 carryover RINs must be used for compliance in 2021, or they will expire. However, vintage 2021 RINs can then be ''banked'' for use in 2022.

[76] 40 CFR 80.1427(a)(5).

[77] 40 CFR 80.1427(b).

[78] These discretionary waiver authorities include the reset and set authorities, CAA section 211(o)(7)(F) and 211(o)(2)(B)(ii) (both of which direct EPA to establish RFS volumes based upon a ''review of the implementation of the program''), discretionary portion of the cellulosic waiver authority, CAA section 211(o)(7)(D)(i) (''the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement''), the general waiver authority, CAA section 211(o)(7)(A) (''The Administrator . . . may waive the requirements''), and the BBD waiver authority with regard to the extent of the reduction in the BBD volume, CAA section 211(o)(7)(E)(ii) (''the Administrator . . . shall issue an order to reduce . . . the quantity of biomass-based diesel . . . by an appropriate quantity'').

[79] *Monroe Energy,* 750 F.3d 909; *ACE,* 864 F.3d at 713.

[80] See, *e.g.,* 72 FR 23904 (May 1, 2007).

[81] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017), 83 FR 63708–10 (December 11, 2018), 85 FR 7016 (February 6, 2020).

even when the market overall could satisfy the standards. In such a case, market disruptions could force the need for a retroactive waiver of the standards, undermining the market certainty so critical to the RFS program. For all of these reasons, the collective carryover RIN bank provides a necessary programmatic buffer that helps facilitate compliance by individual obligated parties, provides for smooth overall functioning of the program to the benefit of all market participants, and is consistent with the statutory provision allowing for the generation and use of credits. We anticipate that the carryover RIN bank will serve this very purpose for the still upcoming compliance with the 2019 standards for small refineries, when actual biofuel use in that year is expected to have fallen considerably short of the RFS standards.[82]

EPA can also rely on the availability of carryover RINs to support market-forcing volumes that may not be able to be met with renewable fuel production and use in that year, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[83]

a. Carryover RIN Bank Size

We project a significant drawdown in the number of carryover RINs as a result of compliance with the 2019 standards. After compliance with the 2019 standards, we project that there will be approximately 1.83 billion total carryover RINs available, a decrease of 1.65 billion RINs from the previous estimate of 3.48 billion total carryover RINs in the 2020 final rule.[84] Since we are setting both the 2020 and 2021 volume requirements at the actual volume of renewable fuel consumed in those years, we project that 1.83 billion total carryover RINs will be available for compliance with the 2022 standards (including the 2022 supplemental standard) as well.

However, there remains uncertainty surrounding the ultimate number of carryover RINs that will be available for compliance with the 2020, 2021, and 2022 standards (including the 2022 supplemental standard) for several reasons, including the fact that compliance with the 2019 standards has not yet occurred for all parties. Furthermore, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. To the extent that there are enforcement actions in the future, they could have similar results and require that obligated parties or renewable fuel exporters settle past enforcement-related obligations in addition to complying with the annual standards. In light of these uncertainties, the net result could be a total carryover RIN bank larger or smaller than 1.83 billion RINs.

b. EPA's Decision Regarding the Treatment of Carryover RINs

We evaluated the volume of carryover RINs projected to be available and considered whether we should intentionally draw down the carryover RIN bank in setting the 2020, 2021, and 2022 volume requirements (including the 2022 supplemental volume). In the proposed rule we stated that we did not believe that it would be appropriate to intentionally draw down the carryover RIN bank, and we received many comments on this proposed decision. Commenters supporting EPA's proposed approach—generally obligated parties—agreed with EPA's statements that maintaining the carryover RIN bank was important to provide liquidity and maintain a functioning RIN market. Many of these commenters noted that compliance with the 2019 standards had already resulted in the significant drawdown of the carryover RIN bank and fewer carryover RINs were available for use in 2020 than in previous years. Some of these commenters also stated that revising the 2020 volumes to maintain the existing bank of carryover RINs was insufficient, and that EPA should lower volumes further to increase the number of available carryover RINs. Other commenters—generally renewable fuel producers—opposed EPA's proposal not to draw down the carryover RIN bank. These parties generally raised concerns that a large number of carryover RINs could reduce demand for renewable fuels. Some of these commenters similarly suggested that a large carryover RIN bank suppresses RIN prices, and that EPA had not demonstrated why a carryover RIN bank of 1.8 billion RINs (or even a lower volume) was insufficient to enable the RIN market to function. Our consideration of these comments is described briefly in this section, and in greater detail in Section 2 of the RTC document.

In this final rule we are maintaining the proposed approach of not intentionally drawing down the carryover RIN bank. In reaching this determination, we considered the functions of the carryover RIN bank, its projected size, the uncertainties associated with its projection, its potential impact on the production and use of renewable fuel, the ability and need for obligated parties to draw on it to comply with their obligations (both on an individual basis and on a market-wide basis), and the impacts of drawing it down on obligated parties and the fuels market more broadly. As previously described, the bank of carryover RINs provides important and necessary programmatic functions—including acting as a cost spike buffer—that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volumes, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under its statutory authorities.

Furthermore, as noted earlier, after compliance with the 2019 standards, we project that there will be a significant drawdown in the number of carryover RINs from 3.48 down to 1.83 billion RINs. This drawdown is due to a combination of factors, including higher-than-projected gasoline and diesel fuel use,[85] a shortfall in renewable fuel production and use,[86] and EPA denying all SRE petitions for 2019.[87] While there is some uncertainty as to the precise amount of the

[82] EPA extended the 2019 compliance deadline for small refineries to the first quarterly reporting deadline after the effective date of the 2021 standards (*i.e.,* this action). See 87 FR 5696 (February 2, 2022).

[83] 79 FR 49793–95 (August 15, 2013).

[84] The calculations performed to estimate the size of the carryover RIN bank can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Final Rule,'' available in the docket for this action.

[85] In establishing the 2019 standards, we projected that 180.4 billion gallons of gasoline and diesel fuel would be used in 2019. However, based on 2019 RFS compliance data, 185.8 billion gallons was actually used. See Table 1 at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and.* This resulted in an increase in the renewable fuel volumes required by the 2019 percentage standards compared to the volumes the standards were based on.

[86] While renewable fuel use in 2019 was higher than in 2018, it was only marginally so and failed to keep up with the increase in the renewable fuel standards and the larger-than-expected increase in gasoline and diesel fuel use.

[87] EPA issued a large number of SREs in recent years, leading to significant increase in the size of the carryover RIN bank. However, EPA recently denied all SRE petitions for 2019, resulting in these small refineries—most of which had been exempt in recent years—needing to acquire RINs to demonstrate compliance or carryforward a deficit.

drawdown for the reasons noted above, it is virtually certain that the draw down will be significant in magnitude.

As we describe further in Section III.C, there was an unanticipated and significant shortfall in RIN generation in 2020 relative to the volumes that the 2020 final rule intended for the market to achieve. The shortfall is anticipated to be smaller than the 1.83 billion total carryover RINs that we project will be available in 2020. While the carryover RIN bank would likely be sufficient to cover the shortfall in renewable fuel production in 2020 on aggregate, this does not mean that all obligated parties would have access to these carryover RINs. RIN holding data indicates that just four obligated parties—which represented approximately 40 percent of the 2019 total RVO—currently hold over half of all available 2019 RINs, and nine obligated parties—which represented approximately 55 percent of the 2019 total RVO—hold over three-quarters of all available 2019 RINs.[88] Conversely, obligated parties that collectively represent approximately fifteen percent of the 2019 total RVO currently do not hold any 2019 RINs whatsoever; thus, these parties may not have access to 2019 carryover RINs to meet their 2020 obligations. Requiring compliance with the original 2020 standards could therefore cause significant disruptions in the RIN market, especially in light of the fact that at least 30 obligated parties carried compliance deficits from 2019 into 2020.[89] These parties must fully meet their 2020 obligations or they will be in non-compliance with their RFS obligations. That is, they do not have the option to carry forward a deficit for a second year in a row.[90] It is possible that these parties could purchase additional RINs on the market. However, given the shrinking size of the carryover RIN bank, the current holders of additional RINs may choose to sell their RINs only at very high costs or in the alternative choose to not sell their RINs but retain them for their own compliance purposes. Thus, and as we explain further in Section III.C, there is a substantial probability that some parties would not be able to acquire sufficient RINs to comply with the original 2020 standards.

However, by revising the 2020 standards to the actual volume of renewable fuel consumed, additional 2019 RINs will likely become available in the marketplace. Parties holding more 2019 RINs than are needed or able to be used (*i.e.,* above the 20 percent carryover limit) after the revision of the 2020 standards are also more likely to trade those RINs, making them available to other obligated parties for compliance with the 2020 standards. These RINs can also be used by small refineries to demonstrate compliance with their 2019 obligations, potentially reducing the number of obligated parties that will need to carry forward a deficit.

The advanced biofuel and total renewable fuel standards we are finalizing for 2022, moreover, are significantly higher than the volume of renewable fuel used in 2020 and 2021. As we explain further in Sections III.E and IV, while we believe that the market is capable of achieving the 2022 standards (including the 2022 supplemental standard), those standards are market-forcing and represent a significant increase in renewable fuel use from the levels used in 2020 and 2021. The market may fall short of using such levels of biofuels, in which case obligated parties may rely on carryover RINs to achieve compliance. We believe that preserving the carryover RIN bank to provide this buffer in the event of a shortfall is important. Given these factors, as well as the uneven holding of carryover RINs among obligated parties noted above, we believe that further increasing the standards with the intent to draw down the carryover RIN bank could lead to significant deficit carryovers and non-compliance by some obligated parties that own relatively few or no carryover RINs. We do not believe this is an appropriate outcome. Therefore, consistent with the approach we have taken in recent annual rules, we are not setting the 2020, 2021, and 2022 volume requirements (including the 2022 supplemental standard) at levels that would intentionally draw down the bank of carryover RINs.

We are not determining that 1.83 billion RINs is a bright-line threshold for the number of carryover RINs that provides sufficient market liquidity and allows the carryover RIN bank to play its important programmatic functions. As in past years, we are instead evaluating, on a case-by-case basis, the size of the carryover RIN bank in the context of the RFS standards and the broader transportation fuel market at this time. Based upon this holistic, case-by-case evaluation, we are concluding that it would be inappropriate to intentionally reduce the number of carryover RINs by establishing higher volumes than what the market achieved in 2020 or 2021 or what we anticipate the market is capable of achieving in 2022. Conversely, while an even larger carryover RIN bank may provide greater assurance of market liquidity, we do not believe it would be appropriate to set the standards at levels specifically designed to increase the number of carryover RINs available to obligated parties. As we explain further in Sections III.D and E, for instance, given the market-forcing intent of the RFS program, it would be inappropriate to establish the 2020 and 2021 volumes below the levels the market actually used simply to increase the carryover RIN bank.

2. Consideration of Cellulosic Carryover RINs

Section 211(o)(7)(D)(i) of the CAA requires EPA to set the applicable volume of cellulosic biofuel at the ''projected volume available during [the] calendar year.'' EPA has consistently interpreted the statutory phrase ''projected volume available'' to refer to the volume of qualifying cellulosic biofuel projected to be produced or imported and available for use as transportation fuel in the U.S. in that year. This is equivalent to the projected number of cellulosic RINs generated in the year that are available for obligated parties to use for compliance. Since we first exercised the cellulosic waiver authority in the 2010 annual rule, we have never included cellulosic carryover RINs in this projection.

In the proposed rule we requested comment on whether to include cellulosic carryover RINs as part of the ''projected volume available.'' Under this interpretation of the cellulosic waiver authority, the ''projected volume available'' would include the projected volume of cellulosic biofuel plus the volume of available cellulosic carryover RINs from the prior year. EPA received a number of comments on this issue, including those supporting EPA's interpretation of ''projected volume available'' in previous rules and those supporting an interpretation of this phrase that would include available carryover RINs. Both groups of commenters argued that their preferred interpretation was more consistent with the statutory language and the policy goals of the RFS program. Commenters opposed to including cellulosic carryover RINs in the projected volume available generally argued that cellulosic carryover RINs provided obligated parties important compliance

[88] See ''2019 RIN Holding Data as of March 1, 2022,'' available in the docket for this action. Carryover RIN holdings are presented in relation to the 2019 total RVO as this is the most recent year for which EPA has compliance data.

[89] This number is based on 2019 compliance reports submitted to EPA to date. There is still some uncertainty in the number of obligated parties that will carry a deficit into 2020 as EPA has extended the deadline for small refineries to submit their 2019 compliance reports. See 87 FR 5969 (February 2, 2022).

[90] See 40 CFR 80.1427(b).

flexibility, just like other categories of carryover RINs. They further argued that cellulosic carryover RINs were especially important in light of the uncertainty associated with cellulosic biofuel production projections. Conversely, commenters that supported including cellulosic carryover RINs in the projected volume available generally argued that despite the continued rapid growth in cellulosic biofuel volumes, excess cellulosic carryover RINs could result in lower cellulosic RIN prices, as happened in 2019 and 2020. Lower cellulosic RIN prices in turn could negatively affect investment in cellulosic biofuel production. These commenters stated that adopting this new interpretation would ensure that there was a strong market for cellulosic biofuel and cellulosic RINs in the future and would result in increased investment in cellulosic biofuel production and ultimately increased cellulosic biofuel production. Finally, these commenters generally suggested that the existence of cellulosic waiver credits adequately addressed obligated parties' need for compliance flexibility.

In this rule we are finalizing cellulosic biofuel volumes for 2020–2022 that are based on the volume of qualifying cellulosic biofuel projected to be produced or imported and available for use as transportation fuel in the U.S. in that year. This is equivalent to the projected number of cellulosic RINs generated in the year that are available for obligated parties to use for compliance. Consistent with EPA's longstanding approach, we have not included available cellulosic carryover RINs in our projection of the projected volume available. The statutory term ''projected volume available'' does not directly address the topic of carryover RINs. Indeed, the cellulosic waiver provision (CAA section 211(o)(7)(D)(i)) does not mention carryover RINs at all, or otherwise refer to the statutory basis for such RINs (CAA section 211(o)(5)). Thus, we believe there are multiple possible interpretations of this ambiguous statutory provision, including the interpretation adopted by EPA in previous years.

We continue to believe that the interpretation EPA adopted in previous years strikes an appropriate balance between the interests of the cellulosic biofuel producers, those obligated to purchase and use cellulosic biofuels and cellulosic RINs, and consumers; and best ensures the ongoing smooth implementation of the RFS program.[91] Below we summarize the considerations we balanced in deciding to retain our longstanding approach in this rulemaking; further discussion is contained in the RTC document.

While we acknowledge that some aspects of the cellulosic biofuel category (such as the cellulosic waiver authority and the cellulosic waiver credits) [92] are unique, we nevertheless believe the benefits of carryover RINs, discussed in Section III.B.1, generally apply to cellulosic carryover RINs. Cellulosic waiver credits can help obligated parties satisfy their cellulosic biofuel volume obligation, but they are not a full replacement for cellulosic RINs. Rather, to satisfy their cellulosic biofuel obligation, obligated parties must retire either a cellulosic RIN or a cellulosic waiver credit plus an advanced RIN.[93] In other words, in the event of a shortfall in cellulosic RIN generation, absent cellulosic carryover RINs, the market must still rely on the advanced carryover RIN bank in addition to cellulosic waiver credits.

Furthermore, because there are no statutory volume targets for cellulosic biofuel in 2023, and because we are required to establish the cellulosic biofuel volumes for 2023 and future years on the assumption that the Administrator will not need to issue a waiver for these years under CAA section 211(o)(2)(B)(iv), we do not anticipate using the cellulosic waiver authority for 2023. This means that it is unlikely that cellulosic waiver credits will be available in 2023.[94] Including cellulosic carryover RINs in the projected volume available through 2022 would also likely result in few to no cellulosic carryover RINs available for use in 2023. Thus, changing our interpretation now to draw down the cellulosic carryover RIN bank in this rule would likely create a scenario where few or no cellulosic carryover RINs and no cellulosic waiver credits would be available in 2023. Obligated parties would thus effectively lose both important compliance flexibilities in that year. We do not believe this would be appropriate.

We recognize that the potential for lower cellulosic RIN prices could have a directionally negative impact on cellulosic biofuel investment. The market circumstances that resulted in lower cellulosic RIN prices in 2019–2020, however, appears to be the result of more than just the availability of cellulosic carryover RINs. Similar volumes of cellulosic carryover RINs, and higher levels of available cellulosic carryover RINs as a percentage of the cellulosic biofuel requirement, were available in prior years when cellulosic RIN prices were also much higher relative to 2019–2020.[95] EPA's assessment of the drop in cellulosic RIN prices in 2019–2020 suggests that there were multiple contributing factors, including a new projection methodology for cellulosic biofuel that under-projected cellulosic biofuel production in 2018 [96] and the granting of a significant number of SREs for 2017 and 2018.

In projecting cellulosic biofuel production for 2022 using the most recent available data, and denying pending SRE petitions in a separate action, we are addressing several of the factors that we believe led to the drop in cellulosic RIN prices in 2019–2020. Most immediately, we expect the size of the cellulosic carryover RIN bank to drop from 49 million to 38 million RINs following 2019 compliance. We are continuing to project significant increases in cellulosic biofuel availability through 2022, based upon a methodology that takes neutral aim at accuracy. We do not expect the standards we set, moreover, to be effectively reduced by future grants of SRE petitions as they have in some past years. As discussed in Section VII, we are also finalizing regulations to allow for the production of qualifying

[91] See *Chevron USA, Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984).

[92] Cellulosic waiver credits may be purchased from EPA by obligated parties in years when EPA uses the cellulosic waiver authority to reduce the statutory volumes of cellulosic biofuel. Regulations related to cellulosic waiver credits can be found in 40 CFR 80.1456.

[93] See 40 CFR 80.1456(c)(4).

[94] Moreover, unlike with carryover RINs, obligated parties are not allowed to carry over cellulosic waiver credits for use in the following year or use them to meet deficits from the prior year. See 40 CFR 80.1456(b)(1), (4). Thus, although cellulosic waiver credits are available for 2022, obligated parties will not be able to carry those over for use in 2023.

[95] The number of cellulosic carryover RINs available for use in 2016 and 2017 were 39 million RINs (17 percent of the 2016 cellulosic biofuel volume requirement) and 34 million RINs (11 percent of the 2017 cellulosic biofuel volume requirement) respectively. These numbers are similar to the number of cellulosic carryover RINs available for use in 2019 and 2020 (49 million RINs or 12 percent of the 2018 cellulosic biofuel volume requirement and 38 million RINs or 6 percent of the 2020 cellulosic biofuel volume requirement). In 2016 and 2017 cellulosic RIN prices averaged $1.89 and $2.78 per RIN. In 2019 and 2020 cellulosic RIN prices averaged $1.15 and $1.49 per RIN.

[96] EPA has continued to apply this projection methodology in years following 2018, including in this rule. This same projection methodology resulted in an over-projection of cellulosic biofuel production in 2019 and 2020. As such, the methodology does not inherently result in under-projections (or over-projections) of cellulosic biofuel generally or CNG/LNG derived from biogas more specifically. Further discussion of EPA's cellulosic biofuel projection methodology can be found in Chapter 5.1 of the RIA.

renewable fuel, including cellulosic biofuel, from biointermediates. While we cannot predict future RIN prices, this combination of actions should provide a strong market signal of EPA's intention to support a robust cellulosic biofuel market.

Further, despite the drop in the cellulosic RIN price in 2019–2020, cellulosic biofuel production has increased significantly each year since 2014, demonstrating that cellulosic biofuel production can and has continued to increase despite volatility in the cellulosic RIN price.[97] We do not believe that changing our interpretation of the ''projected volume available'' to include cellulosic carryover RINs is at this point necessary in order to ensure future growth in cellulosic biofuels. Instead, we believe that the existing policies described here are sufficient to provide the market with adequate certainty for investment and growth in cellulosic biofuels. EPA will continue to monitor the cellulosic biofuel market closely and assess the efficacy of the program in providing a sufficient investment environment for cellulosic biofuels.

Finally, we note that the legal arguments made by commenters supporting a change to include cellulosic carryover RINs in the cellulosic volume, while still relevant, are less so in the context of this rulemaking. Commenters' legal arguments generally focused on an interpretation of the cellulosic waiver authority. In this rulemaking, however, we are concurrently exercising both the cellulosic waiver authority and the reset authority. Under the reset authority, we have broad discretion to establish volumes, including cellulosic biofuel volumes lower than the volume required under the cellulosic waiver. Even were EPA's interpretation of ''projected volume available'' erroneous, we would nonetheless reduce the cellulosic biofuel volumes to the final volumes we are establishing in this document (not including carryover RINs) utilizing the reset authority. Thus, regardless of whether the commenters are correct about EPA's legal authority under the cellulosic waiver, we have legal authority under the reset authority to establish volumes at the projected volume available of cellulosic biofuel, excluding any cellulosic carryover RINs.

3. Ability for the RFS Volumes To Impact Renewable Fuel Supply

In developing the volume requirements, we considered the timing of this action and its ability to impact renewable fuel production, imports, and use. Since only prospective requirements have a significant chance of affecting actual renewable fuel use, we proposed to establish higher volumes for 2022. By contrast, imposing higher volumes for 2020 or 2021 would have no effect on the production or use of renewable fuels in those years. The proposal noted that retroactively requiring volumes higher than what the market has actually supplied could create market disruption and thus interfere with program implementation without advancing program goals.

Commenters generally acknowledged that higher volume requirements for 2020 and 2021 would not impact renewable fuel production and use in those years. However, some commenters stated that revising the 2020 volumes after previously establishing them would reduce confidence in the market-forcing nature of the RFS program and could negatively impact renewable fuel production in future years. While we recognize these concerns, we believe that the unique circumstances in 2020 (described throughout Section III and especially in Section III.C) justify revising the 2020 volumes.[98]

In this rule we are finalizing volumes consistent with the proposed approach: establishing volumes for 2020 and 2021 at the level of renewable fuel used in these years and establishing higher renewable fuel volumes for 2022. With respect to 2020 and 2021, these years have already passed. Both common sense as well as our review of the implementation of the RFS program indicate that this final rule cannot retroactively affect the production or use of renewable fuels in 2020 or 2021, or consequently affect the statutory reset factors in CAA section 211(o)(2)(B)(ii)(I)–(VI) insofar as they are based on renewable fuel production or use that occurred during those years (*e.g.,* the impacts of the use of renewable fuels in 2020 and 2021 on cost, the environment, and so forth). It is possible that the proposed rule, which was signed on December 7, 2021, may have impacted renewable fuel production and use during 2021. Given that the proposal came out in December and was only a proposal and not a final rule, however, those impacts were likely to be quite limited. Any market effects of the 2020 and 2021 volumes finalized in this rule will be felt after the rule is promulgated and mediated through the carryover RIN bank. As we explain below, these mediated market effects can be evaluated with regard to the statutory factors and favor establishing 2020 and 2021 volumes at those actually used.

The situation for 2022, however, is different. We are issuing this final rule with a significant portion of the year remaining. Moreover, we are finalizing volumes using the same policy approach as in the proposal, which was issued in December 2021, albeit with some small changes due to updated data, allowing the proposal to have provided regulated entities with additional notice of the potential requirements. Thus, we believe that the RFS standards for 2022 will be able to significantly affect market decisions for renewable fuel production, import, and use in 2022, and consequently the related statutory factors. In turn, we believe it is appropriate to increase renewable fuel requirements in 2022, when this rule has a much greater chance of actually increasing renewable fuel use and production, as opposed to 2020 or 2021.

Further, there are also disadvantages to requiring higher volumes for 2020 and 2021 retroactively, or similarly, to maintaining the 2020 standards in the original final rule. Such higher volumes would cause some combination of a drawdown of the carryover RIN bank, carryforward deficits, or potentially even non-compliance by obligated parties. While we have previously found an intentional drawdown of the carryover RIN bank to be appropriate in one case, we do not think it is appropriate to do so in this rule for reasons we described above in Section III.B.1. We also do not think that intentionally relying on or effectively compelling carryforward deficits or intentionally causing non-compliance is generally appropriate.

Renewable fuel production and use in 2020 was significantly lower than what we projected in the original 2020 final rule. As discussed in Section III.C, compliance with the original 2020 standards would likely result in a significant drawdown in the number of carryover RINs available for use in 2021 and 2022. As discussed in Section III.B.1, we currently project that as a result of compliance with the 2019 standards, the number of carryover RINs available for compliance with the 2020 standards will be approximately 1.83 billion RINs, a considerable drop from the 3.48 billion total carryover RINs we projected in the 2020 final rule. We expect that as a result of revising the 2020 standards to equal the actual volume of renewable fuels consumed, the number of carryover RINs available for compliance with the 2021 and 2022

[97] See Section 5.1 of the RIA for more detail on annual cellulosic biofuel production.

[98] Further discussion of this topic can be found in Section 6 of the RTC document.

standards will remain at 1.83 billion RINs.

Were we not to modify the 2020 standards, we anticipate that the total number of carryover RINs available for compliance with the 2021 and 2022 standards would decrease substantially, to 680 million RINs, or less than 4 percent of the 2022 total renewable fuel standard.[99] This would be the lowest quantity of carryover RINs available since EPA began projecting the size of the carryover RIN bank in 2013, far below the levels of carryover RINs available to obligated parties in recent years. A well-functioning RIN market is foundational for allowing obligated parties to comply with their RFS mandates, particularly for obligated parties that do not themselves produce or blend renewable fuels. Drawing down the carryover RIN bank to this level could significantly disrupt the functionality of the RIN market.

This drawdown in the carryover RIN bank would be particularly concerning given the uneven nature of carryover RIN holdings and the number of obligated parties that carried deficits into 2020 discussed in the previous section. Taken together, these facts present a significant risk of market disruption were we to not revise the 2020 standards. A number of obligated parties that have not already carried deficits into 2020 would likely have to carry deficits into 2021. Other parties may have to carry deficits into 2022. Some parties, especially those that have already carried a deficit into 2020, may not be able to acquire sufficient RINs for compliance in 2021 or 2022.[100] If we were to leave the 2020 standards unchanged, we find that there would be a substantial probability that some obligated parties would not be able to comply with those standards or with the 2021 and 2022 standards we are finalizing in this action.

We emphasize that the above risks arise from the unanticipated shortfall in 2020 renewable fuel use and the inherent potential for future unexpected market events. In turn, noncompliance may lead to significant adverse business impacts on these parties as well as to civil penalties. Particularly given our legal duty to consider burdens on obligated parties when promulgating retroactive standards, we do not think this outcome would be fair or appropriate.

If these compliance difficulties occur, moreover, we believe that the harms would not just be felt by directly affected obligated parties but also extend to the entire fuels market and the RFS program. If insufficient RINs are available to obligated parties to meet their compliance obligations, this could negatively impact the regulatory and market certainty critical to the investments needed to increase renewable fuel volumes in 2022 and into the future. Uncertainty in the RFS program specifically, and the broader fuels market more generally, could negatively impact investment in increasing renewable fuel production and accordingly the expected future rate of production of renewable fuels. It could also negatively affect investment in the infrastructure necessary to deliver and use of greater quantities of renewable fuel. As discussed in greater detail in the RIA, biofuel production and use generally have positive impacts on climate change, energy security, job creation, and rural economic benefits. Reduced production and use of renewable fuels would therefore be expected to negatively impact these statutory factors. In particular, reduced business certainty could also deter the commercialization of novel advanced biofuels, which have the potential for lower costs and superior environmental benefits.

Retroactively reducing the 2020 volumes mitigates these concerns. Specifically, reducing the 2020 required volumes to the volumes of renewable fuel actually used in 2020 preserves an estimated carryover RIN bank of 1.83 billion RINs for use in 2021, and establishing the 2021 volumes at the volumes of renewable fuel actually used in 2021 preserves the same estimated carryover RIN bank for compliance with the market-forcing 2022 standards.

We note lesser reductions to 2020 or 2021 would give rise to similar concerns. The magnitude of those concerns would depend on how high the 2020 and 2021 volume requirements are and the resulting impact on the carryover RIN bank. We think that some of these concerns, moreover, would remain even were we to make offsetting reductions to the 2022 volumes (*e.g.,* were we to increase the 2021 volumes by 500 million gallons and decrease the 2022 volumes by the same amount). In that case, even though the aggregate incentive for renewable fuels across all three years might remain the same, retroactively requiring compliance for past years would increase the risk of market disruption. This is because while we expect a significantly higher number of RINs to be generated in 2022 than in either 2020 or 2021, compliance is still conducted on a year-by-year basis. As noted above, there are limitations on the ability of obligated parties to carry forward deficits into 2022 and consequently to leverage 2022 RIN generation to meet higher 2020 or 2021 standards.

C. Volume Requirements for 2020

We proposed to revise previously finalized 2020 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes to equal the volume of such fuels actually consumed in the U.S. in 2020. We also proposed to make corresponding adjustments to the percentage standards applicable to obligated parties.[101]

As discussed previously, commenters generally acknowledged that higher volume requirements for 2020 would not impact renewable fuel production and use in 2020, but expressed concerns that revising the 2020 volumes after previously establishing them would reduce confidence in the market-forcing nature of the RFS program and could negatively impact renewable fuel production and use in future years. Many of these commenters stated that the structure of the RFS program automatically adjusted to the lower than expected demand for gasoline and diesel fuel, and that further modification of the 2020 percentage standards was thus unnecessary, especially in light of the availability of carryover RINs. Other commenters supported our proposed revisions to the previously established 2020 volume requirements, noting the impact of the COVID–19 pandemic and the shortfall in renewable fuel use relative to projections in the original 2020 final rule.

In this rule we are finalizing revised 2020 volumes and percentage standards based on the actual volumes of renewable fuel, gasoline, and diesel fuel used in 2020, consistent with the proposed rule. While we recognize the concerns raised by commenters opposing these changes, we believe that the unique circumstances in 2020 justify revising the 2020 volumes, and that we

[99] The calculations performed to project the number of carryover RINs that would be available if we did not revise the 2020 standards can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Final Rule,'' available in the docket for this action. Further discussion of the size of the advanced and cellulosic carryover RIN banks is contained in the above-cited memo, Section III.B.2, and Section 2.6 of the RTC document.

[100] The regulations at 40 CFR 80.1427(b) allows obligated parties to only carry forward a deficit if they did not carry forward a deficit from the previous calendar year; thus, an obligated party that carries forward a deficit from 2020 into 2021 may not carry forward a deficit from 2021 into 2022.

[101] As discussed in Section V, the adjustments to the percentage standards would also include changes to the non-renewable gasoline and diesel volumes to reflect actual 2020 consumption.

have the authority to do so as discussed in Sections II.C and D.

We acknowledge that we are reconsidering and revising the already finalized 2020 standards [102] after the November 30, 2019, statutory deadline for the 2020 standards in CAA section 211(o)(3)(B)(i). The revised 2020 standards are also retroactive. Barring unusual circumstances, we generally do not believe it is appropriate to reconsider and revise previously finalized RFS standards, particularly where we are doing so retroactively.[103] Nonetheless, we are doing so for 2020 because, in compliance with the statutory requirement that we review the implementation of the RFS program, we have determined that critical and unanticipated events have occurred which affected fuels markets in that year and consequently affect compliance with the RFS program. Specifically, there was a significant, unprecedented, and unforeseen shortfall in renewable fuel use in 2020 relative to the volumes that we required in the original 2020 final rule. Actual use of qualifying renewable fuel in 2020 (17.13 billion RINs) was nearly 3 billion RINs lower than the 20.09 billion RINs that the 2020 final rule projected the market could achieve. That is, the actual shortfall is 14.9 percent of the total renewable fuel volume in the original 2020 rule. This is the largest shortfall on record, in both absolute and percentage terms, since Congress enacted the RFS program.[104] This shortfall was largely due to two factors: (1) the COVID–19 pandemic, which caused an unforeseen and drastic fall in transportation fuel demand generally and in biofuel demand more specifically; and (2) EPA's projection in the 2020 rule that we would grant a large number of SREs for 2020 and our consequent decision to deny all pending 2020 SRE petitions.

In general, under the RFS program, a shortfall in gasoline and diesel fuel consumption relative to the projected volumes results in a corresponding decrease in the volume of renewable fuel required. This self-adjusting nature of the program is a function of the fact that the RFS standards are applied as a percentage to an obligated party's gasoline and diesel fuel production; the obligation to acquire RINs for compliance rises and falls along with the sum of gasoline and diesel fuel production volume. Further, historical deviations before 2020 between the volumes of gasoline and diesel fuel actually used relative to their projected volumes have been relatively small, on the order of a few percent.[105] As a result, we have historically not adjusted the RFS standards after they have been established to account for updated gasoline and diesel fuel consumption levels. This is consistent with our general policy of not reconsidering and revising previously finalized RFS standards.

However, the situation in 2020 was different. As explained further in Section III.B, the shortfalls in 2020 were both significantly larger than in any previous year (about 12 percent) and disproportionately affected gasoline more than diesel fuel.[106] This is important because, on average, finished gasoline contains more renewable content than finished diesel. The vast majority of gasoline contains at least 10 percent ethanol, mostly in the form of E10, whereas the average concentration of renewables in diesel is considerably less than 10 percent.[107] Thus, while the decrease in transportation fuel demand in 2020 proportionally decreased the required renewable fuel volume, the decrease in the demand for renewable fuel was greater given the larger drop in gasoline versus diesel fuel demand. In other words, despite the self-adjusting nature of the RFS standards in response to transportation fuel demand, the disproportionate fall in gasoline demand meant actual RIN generation still fell short of what was ultimately required for compliance.

In addition, when we promulgated the 2020 volume requirements, we did so while projecting for the first time that we would be granting a large number of SREs for 2020. Specifically, the 2020 final rule projected that EPA would grant exemptions of 7.26 billion gallons of gasoline and diesel, equivalent to approximately 770 million RINs.[108] We reallocated the projected exempted volumes onto the remaining obligated parties, thereby significantly increasing the obligations on those parties. However, EPA recently announced that we were denying pending SRE petitions before the agency, including all petitions for 2020.[109] In other words, the actual exempted volume of gasoline and diesel fuel in 2020 is zero. Were we to leave the 2020 standards unchanged, this discrepancy between projected and actual exemptions would significantly raise the effective volume obligations for all obligated parties. This effect is independent from the COVID-related transportation fuel demand effects described above.

Accounting for these factors, actual renewable fuel use in 2020 (17.13 billion RINs) was approximately 1.23 billion RINs lower than the estimated obligation for 2020 were we to leave the original 2020 percentage standards unchanged, based on available data of obligated gasoline and diesel fuel production in 2020 (18.35 billion RINs). As such, compliance with the original 2020 standards would likely result in a significant drawdown of the number of carryover RINs available for use in 2021. As we discussed in Section III.B, this would present a substantial probability of market disruption, including of noncompliance by some obligated parties.

While our analyses have focused on the availability of RINs for RFS compliance in 2020, the risks we describe must be considered in the broader context of the fuels market. As we explain in Chapter 1 of the RIA, in our review of the implementation of the RFS program, we find that the RFS program, the biofuels market, and the broader transportation fuels market are highly intertwined. This broader consideration of the larger fuels market further supports our concerns regarding maintaining the original 2020 standards. For one, 2020 follows a year (2019) in which the market already relied heavily on carryover RINs to meet the RFS obligations. As noted above, we anticipate the market to draw down the carryover RIN bank from 3.48 billion to 1.83 billion RINs to meet compliance obligations for 2019. While the 3.48 billion carryover RIN bank going into 2019 reflected a historical high, it was the result of roughly three years of accumulation.[110] That accumulation occurred during a period when EPA had incrementally raised the total renewable fuel volume each year and maintained the conventional volume at the full implied statutory volume of 15 billion gallons. At the same time, EPA had

[102] 85 FR 7016 (February 6, 2020).

[103] We have in the past modified previously finalized RFS standards, including in response to court decisions (see 80 FR 77420 (December 14, 2015), modifying the cellulosic biofuel standards), and in response to new information and petitions for reconsideration (see 79 FR 25025 (May 2, 2014)), also modifying the cellulosic biofuel standard).

[104] See Figure 1.2–4 in the RIA.

[105] See Figure 1.2–1 in the RIA.

[106] See Figure 1.2–1 in the RIA.

[107] According to EIA's January 2022 STEO diesel consumption in the U.S. in 2020 was 3.51 million barrels per day (54.0 billion gallons). Biodiesel and renewable diesel in 2020 totaled 2.50 billion gallons, which generated 3.87 billion RINs. Thus, the average gallon of diesel in the U.S. was blended with renewable fuel that generated 0.07 RINs (3.87 billion RINs/54.0 billion gallons), while the average gallon of gasoline was blended with renewable fuel that generated 0.10 RINs.

[108] 85 FR 7053, February 6, 2020.

[109] See ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

[110] See ''Carryover RIN Bank Calculations for 2020–2022 Final Rule,'' available in the docket for this action.

granted large numbers of SREs that were not accounted for in setting the standards and significantly reduced the effective RFS requirements below the volumes we established in our annual rules. More recently, we have denied pending SRE petitions, including all petitions for 2019 and 2020, and we are not aware of any circumstances that would warrant EPA granting SREs in the future that would increase the size of the carryover RIN bank akin to what occurred leading up to 2019.[111]

Were we to leave the 2020 standards unchanged, as noted above, we would expect a further drawdown of the carryover RIN bank to the lowest historical levels since we began tracking the carryover RIN bank in 2013. The associated shortfall in renewable fuel production and use in 2020 comes on the heels of an already large shortfall in renewable fuel production and use in 2019. As noted above, the dramatic reduction in the carryover RIN bank in 2019 eliminated much of the flexibility the carryover RIN bank might have otherwise provided for 2020. Moreover, a significant reduction to the number of carryover RINs for two consecutive years would only increase the general concerns associated with relying on carryover RINs to meet the RFS obligations, especially for parties that generally do not own significant quantities of carryover RINs.

Additional factors regarding the larger transportation fuels market also support our decision to revise the 2020 standards. The drop in demand for transportation fuel due to the COVID–19 pandemic had a significant impact on refiners. Refining margins (often referred to as the ''crack spread'') dropped sharply in 2020, resulting in broad losses across the refining industry in 2020.[112] [113] In response to this economic environment many refiners sought to minimize expenses to preserve available capital, taking actions such as delaying or cancelling capital expenditures.[114] At the same time, biofuel producers were also impacted by a dramatic reduction in transportation fuel demand and challenges across the supply chain for agricultural commodities, including biofuel feedstocks.[115] This combination of factors made the acquisition of the renewable fuel volumes necessary to meet the RFS obligations in 2020 uniquely challenging, both economically and practically.

Given the above reasons, we have decided to reconsider and revise the 2020 volumes to those actually used. In doing so, we recognize that since 2020 has already passed, this rulemaking has no ability to affect actual production, imports, and use of renewable fuel in 2020. As such, the impact of the rule on those statutory factors related to renewable fuel production and use during 2020 is similarly limited. Rather, this final rule seeks to ensure sufficient RINs are available for compliance. It acts to relieve burdens on obligated parties, and in some cases the potentially onerous burden of non-compliance with the RFS program, the possibility of civil penalties, and associated market disruptions. This approach also seeks to mitigate related negative impacts on the regulatory and market certainty critical to the investments needed to increase renewable fuel volumes in 2022 and into the future. As discussed in Section III.B.3, this market certainty has an impact on many of the statutory factors, including the expected future rate of production of renewable fuels, the development of infrastructure to distribute and use increased volumes of such fuels, climate change, energy security, job creation, and rural economic benefits.

As our reconsideration of the 2020 standards is retroactive, we have considered and mitigated burdens on obligated parties as required by the D.C. Circuit's caselaw on retroactive RFS standards. To begin with, as noted above, we have ensured sufficient RINs for compliance, and this factor has been key in our decision to reconsider and revise the standards to actual supply. We have also considered several other factors:

- Adequate lead time for obligated parties to comply with the revised standards.
- The availability of compliance flexibilities.
- The impact of the revised standards on those parties that may have relied on the original standards in making business decisions.
- Alternatives to revising the 2020 volume requirements to be equal to the volumes actually consumed.

Each of these factors is discussed below.

Regarding lead time for obligated parties, we note that relatively less lead time is needed given that we are reducing the stringency of their obligations, as opposed to increasing their stringency. Nonetheless, we are providing significant lead time. Earlier this year we extended the 2020 compliance deadline for obligated parties to the next quarterly reporting deadline after the 2019 compliance reporting deadline for small refineries, which in turn was extended in that same action to the next quarterly reporting deadline that is after the effective date of this rule.[116] In other words, obligated parties will have no less than 5 months after the publication of this final rule in the **Federal Register**, and no less than 11 months after the publication of the 2020–2022 proposal,[117] to comply with their 2020 obligations. Had we not adjusted the 2020 compliance deadline, obligated parties would have needed to demonstrate compliance by March 31, 2021.

Regarding the availability of compliance flexibilities, obligated parties continue to have access to carryover RINs and carryforward deficits to facilitate compliance. As discussed above, the revision of the 2020 volumes to those actually supplied preserves the carryover RIN bank and the availability of this flexibility.

Regarding potential reliance interests, we recognize that retroactively adjusting the 2020 standards may disrupt market expectations created by the prior final rule, for instance on the part of biofuel producers that made investments or other parties who transacted biofuels or RINs, based on the higher standards originally finalized. As a general matter, these expectations may not rise to the level of reliance interests recognized by the courts.[118] As discussed in Section II, EPA generally has authority to reconsider and revise prior rulemakings. Congress also specifically granted EPA multiple waiver authorities. Moreover, as shown in Section 1.9 of the RIA, RIN prices have fluctuated significantly over time. Thus, market actors may not possess legally cognizable reliance interests in specific RFS volumes or

[111] See ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

[112] Q4 2020: U.S. Refining Margins Remain Depressed; Refining Industry in Focus. Baker & O'Brien Inc.; March 12, 2021.

[113] Somasekhar, Arathy. ''U.S. oil refiners set for first profit since onset of pandemic.'' Reuters. July 28, 2021.

[114] Agarwal, Bharti. ''Effect of COVID–19 pandemic on refining and refiners.'' IHS Markit. August 2020.

[115] Aday, Serpil and Aday, Mehmet Seckin. ''Impact of COVID–19 on the food supply chain.'' Food Quality and Safety. Volume 4, Issue 4. December 2020.

[116] 87 FR 5696 (February 2, 2022).

[117] 86 FR 72436 (December 21, 2021).

[118] See *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909, 919–20 (D.C. Cir. 2014) (holding that the litigant ''had no legally settled expectation'' regarding how EPA exercised its waiver authority to adjust the renewable volume obligations). See also *AFPM,* 937 F.3d 577–78 (finding it far from obvious that biofuel producers had serious reliance interests in the annual volumes).

standards or specific RIN prices. Even hypothetically assuming that some market expectations amounting to legally cognizable reliance interests exist, those expectations and interests were already confounded by the significant and unanticipated events described above, including the COVID–19 pandemic's impact on the fuels markets.

Furthermore, obligated parties who obtained additional RINs in response to the original, higher 2020 standards are not penalized in any way. To the contrary, these parties will continue to have sufficient RINs to comply with the revised, lower standards and may sell excess RINs or carry them over for 2021 compliance consistent with EPA's regulations. Similarly, biofuel producers who made investments in response to the original 2020 standards and generated additional RINs are also able to sell these RINs in the market and may continue to obtain returns on their investments as the market demands additional RINs needed to meet the 2022 standards. Although this action may reduce the market value of 2020 RINs, maintaining the current 2020 standards would force other obligated parties into noncompliance. We do not believe any potential reliance interests of RIN-holders would justify imposing the burden of non-compliance on obligated parties who had no reason to anticipate the unprecedented events of 2020. Additionally, we have extended the 2020 compliance deadline so that all parties are still able to trade and acquire RINs for compliance with the 2020 standards.[119] In all cases, we believe that revising the standards is warranted based on the events and factors described above and that we have set forth a sufficiently detailed justification for doing so.

Finally, we also considered alternatives to our final action, including revising the 2020 volumes to volumes lesser or greater than the volume of renewable fuel that was supplied, as well as leaving the original volumes from the 2020 final rule in place. We do not believe it is appropriate to retroactively modify the volumes to be lower than what the market actually used. We acknowledge that reducing the 2020 volumes further would allow the market to build up the carryover RIN bank so as to provide even greater market liquidity. This would benefit obligated parties, particularly those that carried forward deficits into 2020 or have very few or no carryover RINs. However, we do not believe this would be appropriate since the general purpose of the RFS program is to incentivize increasing production and use of renewable fuels over time. Doing so, moreover, would be unprecedented. While EPA has previously set the RFS standards at what the market actually used (like for 2014 and 2015 in the 2014–2016 rule), we have never intentionally reduced the standards with the express intent to inflate the size of the carryover RIN bank. We further discuss this issue in the RTC document.

At the same time, we do not believe that requiring higher volumes than what was actually used is appropriate. As explained above, doing so would result in some combination of potentially disruptive outcomes: (1) a reduction in the size of the carryover RIN bank; (2) obligated parties carrying deficits into 2021; and/or (3) obligated parties being out of compliance with their RFS obligations. Given the intertwined nature of compliance from year to year, we acknowledge that requiring higher volumes in 2020 may increase demand for renewable fuels in 2022. However, this rule achieves the same result simply by requiring higher volumes in 2022. Given that this rule cannot affect past years such as 2020 but can affect the future, we believe it is more appropriate to drive increasing renewable fuel demand prospectively, in 2022. Doing so also mitigates the compliance concerns, including the potential for non-compliance, described above. We discussed this issue further in Section III.B.

The above reasons also support our decision to act after the statutory deadlines for waiving the volumes and establishing the 2020 standards. We have also further and specifically assessed whether it is appropriate to exercise the reset authority after the passage of the statutory deadline and have concluded that it is. We received comments from certain stakeholders suggesting either that EPA lacked the authority to utilize the reset authority after the deadline had passed, or that our discretion is limited when utilizing the reset authority after the deadline. Commenters suggested that the reset authority only provides for a prospective waiver and cannot be used to modify volumes that have already been established. As explained in Section II.A.2, the statutory deadline for resetting the total renewable fuel volume was in December 2019 (*i.e.,* one year after the promulgation of the 2019 standards final rule).[120] The statutory deadlines for resetting the advanced biofuel and cellulosic biofuel volumes occurred even earlier. Despite being late to meet our statutory obligations, we are exercising the reset authority for several reasons.

First, doing so satisfies our statutory obligation to reset the statutory volumes. Second, we have already notified the public that we intended to exercise the reset authority.[121] This rule makes good on that intent and meets our statutory obligation. Third, the reset authority also provides EPA broad discretion to modify the renewable fuel volumes and to establish biofuel volume requirements at the volumes actually consumed in 2020. Such 2020 volumes for advanced biofuel and total renewable fuel could not be established under the cellulosic waiver authority, which was the legal basis for the original 2020 final rule.[122] Nonetheless, we believe that these are the appropriate volumes for the reasons explained above. Fourth, we acknowledge that the text of the statutory reset provision does contemplate a prospective waiver of the applicable volumes. This is not, however, different from other statutory authorities in the RFS program, which also contemplate prospective actions.[123] This includes the authority to establish volumes for 2023 and beyond under CAA section 211(o)(2)(B)(ii), which requires EPA to establish volume requirements 14 months in advance of when they apply based on the same

[119] 87 FR 5696 (February 2, 2022).

[120] We received comments suggesting that the lead time requirement in CAA section 211(o)(2)(B) also applied, such that EPA was required to promulgate modified standards by October 31, 2019 (*i.e.,* 14 months prior to the year in which the standards would take effect). Since the reset provision in CAA section 211(o)(7) provides the timing requirement specific for the reset rule (one year after the last triggering action), we believe that specific provision controls over the more general 14-month provision in CAA section 211(o)(2)(B), which applies to establishing standards under that provision more generally (including for BBD after 2012 and for all other fuel categories after 2022). In any event, whether we utilize the October 31, 2019 deadline, or the December 2019 deadline, our exercise of the reset authority is late.

[121] See 84 FR 36766 (July 29, 2019), 86 FR 72436 (December 21, 2021).

[122] The cellulosic waiver authority limits reductions in the statutory total renewable fuel and advanced biofuel volumes to no more than the reduction in the cellulosic biofuel volume. In the 2020 final rule, we exercised the cellulosic waiver to the maximum extent, resulting in an implied conventional renewable fuel volume of 15 billion gallons and an implied non-cellulosic advanced biofuel volume of 4.5 billion gallons. However, the volumes of advanced biofuel and total renewable fuel actually supplied in 2020 fell short of these numbers.

[123] See, *e.g.,* CAA section 211(o)(3)(B)(i) (requiring EPA to establish standards by November 30 of the preceding year), section (o)(7)(D)(i) (requiring EPA to determine whether or not to exercise the cellulosic waiver authority by November 30 of the preceding year), and section (o)(2)(B)(ii) (requiring EPA to establish volumes 14 months before they apply).

statutory factors as the reset authority. The D.C. Circuit has reviewed EPA's belated exercise of authority under that and other RFS provisions and has held that EPA does not lose authority to act merely as a result of a missed deadline [124] and upheld our prior rulemakings as reasonable. Finally, EPA generally has the authority to reconsider past actions establishing the RFS standards and in doing so can utilize explicit waiver authorities provided in the statute to modify volumes that we declined to use at the time of the initial promulgation of the rule to reduce volumes beyond initial reductions. Nothing in the statute indicates that the various waiver authorities (such as the reset and cellulosic waiver authorities) cannot be used together, nor does anything indicate that EPA's authorities are limited upon reconsideration of a rule. Further discussion of this topic is provided in Section 2 of the RTC document.

The revised 2020 volumes, along with the original volumes, are shown in Table III.C–1. The revised 2020 percentage standards are provided in Section V.D.

TABLE III.C–1—REVISED VOLUME REQUIREMENTS FOR 2020

[Billion RINs]

Standard	Original volume	Revised volume
Cellulosic Biofuel	0.59	0.51
Biomas-Based Diesel	[a] 2.43	[a] 2.43
Advanced Biofuel	5.09	4.63
Total Renewable Fuel	20.09	17.13

Source: EMTS (EPA Moderated Transaction System). See "RIN supply as of 2–17–22"

[a] The BBD volume for 2020 is in physical gallons (rather than RINs) and was established in the 2019 final rule (83 FR 63704, December 11, 2018). We are not revising the 2020 BBD volume in this action.

D. Volume Requirements for 2021

We proposed to establish the cellulosic biofuel, advanced biofuel, and total renewable fuel volumes for 2021 at the volumes of these fuels projected to be supplied to the U.S. in 2021. Commenters generally supported this proposed approach. Many commenters submitted updated data on renewable fuel use in 2021, or referenced publicly available data on renewable fuel use and asked that the 2021 volumes reflect this updated data. Some commenters suggested that the 2021 volumes should be set at the implied statutory levels despite the retroactive nature of the 2021 volumes and the anticipated shortfall in renewable fuel use relative to the implied statutory volumes. In this final rule we are establishing cellulosic biofuel, advanced biofuel, and total renewable fuel volumes for 2021 at the volumes of these fuels supplied to the U.S. in 2021, as proposed. However, instead of basing the 2021 volumes on a projection of the supply in 2021 as in the proposed rule, we now have and are updating the volumes based on data on the actual supply of these fuels in 2021. While this results in some changes relative to the proposed volumes for 2021, these changes are relatively small, and are consistent with our stated intent in the proposed rule to finalize volumes for 2021 consistent with the most current data available.

Given that we are establishing 2021 volumes on the same basis as the 2020 volumes (*i.e.,* at the volumes of biofuels actually used), the rationale for our 2021 volumes is similar to the rationale for our 2020 volumes. Below we present some of the key similarities and also note differences where they exist. As with 2020, because this rule is being finalized after the end of 2021, there is no longer any ability for the rule to affect renewable fuel production, imports, and consumption in the U.S. in 2021. As such, the impact of the rule on each of the statutory factors with regard to renewable fuel use and production during 2021 is similarly limited. Also, as with 2020, we could have set volumes for 2021 that were greater or lesser than the volume of renewable fuel that was actually consumed in 2021, but we do not believe that doing so would be appropriate for similar reasons. We do, however, believe that the RFS program should drive increases in renewable fuel volumes over time. Given that we are setting volumes for 2020–2022 in this rule and the fact that retrospective volumes have limited ability to affect biofuel use, we believe that increases in volume requirements are more appropriate in 2022. That is when this rule applies prospectively for part of the year and has the potential to affect actual biofuel consumption. We discuss this relationship between the three years further in Section III.B.3.

As with 2020 standards, the 2021 standards are both late (relative to the statutory deadline of November 30, 2020) and retroactive. Unlike for 2020, however, we are not modifying previously finalized standards for 2021. The lateness and retroactivity of the 2021 standards are appropriate for similar reasons as for 2020. We believe that establishing the 2021 volumes at the volumes actually used properly balances the statutory goal of increasing renewable fuel use with mitigating burdens on obligated parties. It ensures that the obligated parties should have sufficient RINs to comply. In a separate action, we have extended the compliance reporting deadline for 2021, providing additional lead time. Obligated parties will have at least 9 months after the publication of this action in the **Federal Register** before having to demonstrate compliance with their 2021 obligations.[125] We also maintain the existing compliance flexibilities for obligated parties including access to carryover RINs and carryforward deficits. As discussed above, the revision of the 2020 volumes to those actually supplied preserves the carryover RIN bank that helps facilitate compliance, including for 2021. In addition, we note that this approach, of setting volumes at those actually used, is consistent with our approach in the 2014 and 2015 standards rulemakings, which the D.C. Circuit upheld in *ACE.*

As with the 2020 volumes, the 2021 volumes also depend upon an exercise of the reset authority. We believe using the reset authority is appropriate for similar reasons as for 2020, including that we are statutorily obligated to reset 2021 volumes, we have previously informed the public that we intended to reset the volumes, and the reset authority gives us discretion to reduce the total renewable fuel volume beyond what we could establish under the

[124] See *ACE* at 718–9, *NPRA* at 154–158, *Monroe* at 920.

[125] See 40 CFR 80.1451(f)(1)(i)(B)(*3*); 87 FR 5696 (February 2, 2022).

cellulosic waiver. As with resetting the 2020 standards, we do not believe that the passage of time or the retroactive nature of this rule deprive us of our ability to exercise the reset authority. Additionally, the statute indicates that when we reset the volumes, we must do so for all remaining years in the statutory volume tables, which extend through 2022. Thus, in resetting the 2020 volumes, we are obligated to reset the 2021 and 2022 volumes.[126]

The volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel that we are establishing for 2021 are shown in Table III.D–1. The BBD volume for 2021 was previously established in the 2020 final rule and is included in Table III.D–1 for context. These volumes are based on the actual consumption of renewable fuels in the U.S., as discussed in greater detail in Chapter 5 of the RIA.

TABLE III.D–1—RFS VOLUMES FOR 2021

[Billion RINs]

Category	Volume
Cellulosic Biofuel	0.56
Biomass-Based Diesel	[a] 2.43
Advanced Biofuel	5.05
Total Renewable Fuel	18.84

[a] The BBD volume for 2021 is in physical gallons (rather than RINs) and was established in the 2020 final rule (85 FR 7016, February 6, 2020). We are not revising the 2021 BBD volume in this action.

E. Volume Requirements for 2022

For 2022 we proposed a cellulosic biofuel volume that was equal to the volume of qualifying cellulosic biofuel projected to be used in the U.S. in 2022 and volumes of non-cellulosic advanced biofuel and conventional renewable fuel that were consistent with the implied statutory targets for these categories.[127] The proposed volumes for 2022 were significantly higher than the proposed volumes for 2020 and 2021.

We received numerous comments on the proposed volumes for 2022. Many commenters supported the proposed volumes and the incentives those volumes provide for increased renewable fuel production and use in the U.S. Some of these commenters suggested that even higher volumes may be appropriate, particularly higher volumes of advanced biofuel. We also received many comments arguing that the proposed volumes were too high. These comments generally raised concerns that the implied volume for conventional renewable fuel (15 billion gallons) was far above the E10 blendwall. To address these concerns these parties requested that we reduce the total renewable fuel volume by 1.2–1.5 billion gallons so that the implied conventional volume reflected the estimates of the E10 blendwall in the proposed rule. As an alternative means of reducing the implied volume of conventional renewable fuel below the blendwall, some commenters suggested that we retain the proposed volume for total renewable fuel, but increase the advanced biofuel volume requirement by 1.2–1.5 billion gallons. Finally, some commenters requested that we reduce the advanced biofuel volume. These commenters generally raised concerns about the availability and/or cost of advanced biofuel feedstocks, and the environmental impacts associated with increased use of these feedstocks to produce higher volumes of advanced biofuels.

After considering these comments and updated data on biofuel production and use, we are establishing 2022 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes using the same general approach as in the proposed rule. We are establishing the cellulosic biofuel volume at the volume of qualifying cellulosic biofuel projected to be used in the U.S. in 2022. We are establishing the advanced biofuel and total renewable fuel volumes consistent with the cellulosic biofuel volume and the implied statutory targets for non-cellulosic advanced biofuel and conventional renewable fuel (5 billion gallons and 15 billion gallons, respectively). These volumes represent significant growth compared to historical volumes and compared to the volumes of these fuels used in 2020 and 2021. The cellulosic biofuel volume we are finalizing for 2022 represents a 70 million gallon increase over the volume of cellulosic biofuel used in 2021. This increase is based on the expected continued growth in biogas use. We also anticipate significant growth in the use of non-cellulosic advanced biofuels, especially in advanced renewable diesel.[128] While we expect that conventional ethanol use will fall short of the implied 15 billion gallon volume in 2022 by roughly 800 million gallons, we project that greater volumes of biodiesel and renewable diesel will be produced and imported to offset this shortfall. We discuss the 2022 BBD volume separately in Section III.F. The remainder of this section discusses our rationale for finalizing these volumes. Additional discussion, including more detailed responses to the comments mentioned above, can be found in the RIA and the RTC document.

The cellulosic biofuel volume for 2022 is equal to the projected available volume of cellulosic biofuel.[129] This volume represents the highest volume of cellulosic biofuel we can establish for 2022 given the cellulosic waiver provision, which requires EPA to reduce the statutory cellulosic biofuel volume to the projected volume available.[130] While EPA does have the authority to establish a lower cellulosic biofuel volume under the reset authority, we do not believe this would be appropriate for 2022, as discussed below.

EPA's approach to the cellulosic biofuel volume for 2022 seeks to realize the potential for GHG benefits associated with increased cellulosic biofuel production despite the relatively high costs of liquid cellulosic biofuels, and in the case of CNG/LNG derived from biogas, the impact on the price of transportation fuel. Because cellulosic biofuels through 2022 are projected to be produced from wastes or residues, their production is not expected to have significant adverse impacts on several of the statutory factors such as the price and supply of agricultural commodities, water quality and supply, and the conversion of wetlands, ecosystems, and wildlife habitat. Thus, while some of the statutory factors (such as the cost to consumers of transportation fuel and the cost to transport goods) may suggest that a volume of cellulosic biofuel lower than the volume projected to be produced in 2022 would be appropriate, we have determined that these factors are outweighed by other factors (such as climate change).

The advanced biofuel and total renewable fuel volumes strike a balance between numerous competing statutory factors. They reflect the potential for growth in the volume of renewable fuel produced and consumed in the U.S., and the potential energy security and climate change benefits that producing and consuming increasing volumes of qualifying renewable fuels provide.

[126] See CAA section 211(o)(7)(F) (''the Administrator shall promulgate a rule . . . that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies'').

[127] The implied statutory volume for non-cellulosic advanced biofuel in 2022 (5 billion gallons) is the difference between the statutory volumes for advanced biofuel (21 billion gallons) and cellulosic biofuel (16 billion gallons) in 2022. Similarly, the implied statutory volume for conventional renewable fuel in 2022 (15 billion gallons) is the difference between the statutory volumes for total renewable fuel (36 billion gallons) and advanced biofuel (21 billion gallons) in 2022.

[128] See Chapters 2 and 5 of the RIA.

[129] See Chapter 5.1 of the RIA.

[130] The projected volume available must represent a ''neutral aim at accuracy'' *API* v. *EPA,* 706 F.3d 476 (D.C. Cir. 2013).

They also take into consideration the potential negative impacts of renewable fuels produced from crops such as corn or soybeans on environmental factors such as the conversion of wetlands, ecosystems, and wildlife habitat, water quality, and water supply.

We acknowledge that the implied conventional renewable fuel volume is higher than the volume of these fuels projected to be consumed in the U.S. in 2022. This may help incentivize the continued expansion of the infrastructure necessary to expand the use higher-level blends of ethanol, which remains the dominant form of conventional renewable fuel. In recent years, ethanol consumption beyond the E10 blendwall in the U.S. has been limited by infrastructure constraints—as well as other factors—to a volume significantly lower than the volume of ethanol produced in the U.S. and the total production capacity of the U.S. ethanol industry. If these infrastructure constraints can be overcome, domestic ethanol consumption and ultimately domestic ethanol production could increase, and this could result in job creation, rural economic development, higher corn prices, and a greater supply of agricultural commodities. Despite the incentive for higher-level ethanol blends, it is our expectation that ethanol use will fall short of 15 billion gallons. We project that additional volumes of conventional biodiesel and renewable diesel could be supplied in 2022 to fulfill a portion of that shortfall, including renewable fuels that are grandfathered under 40 CFR 80.1403 and are thus not required to meet the minimum 20 percent GHG reduction required for all qualifying renewable fuel. These fuels would most likely be produced in foreign facilities and from foreign grown feedstocks. This may cause additional adverse environmental impacts and would not provide the same benefits to domestic job creation and rural economic development but could still provide energy security benefits.

In addition, based on past experience, the shortfall in conventional renewable fuel volumes needed to meet 15 billion gallons means that obligated parties will likely need to look to other sources of renewable fuel beyond conventional renewable fuels to meet their compliance obligations for 2022. While we are establishing the non-cellulosic portion of the advanced biofuel standard at the full implied statutory volume of 5 billion gallons, our assessment of potential supply indicates that additional volume, particularly of advanced renewable diesel, will likely be used in 2022. This means that if, as expected, the market falls short of the implied volume of conventional renewable fuel in 2022, as has happened in several years in the past, excess volumes of advanced biofuel beyond what is needed to meet the advanced biofuel volume will likely be used to fulfill some portion of the shortfall.

Finally, while we are projecting that sufficient biodiesel and renewable diesel, both advanced and conventional, will be available to help meet the 2022 volume requirements, the market may fall short. In that case, the carryover RIN bank can still enable compliance and help avoid or mitigate potential market disruptions. As noted above, our decisions to establish the 2020 and 2021 volumes at those actually supplied preserve the carryover RIN bank. Obligated parties may use these carryover RINs to help them comply with the 2022 standards. See Section III.B for a more detailed discussion of carryover RINs.

We acknowledge that in lieu of relying on higher volumes of advanced biofuel to fulfill an expected shortfall in conventional biofuel, we could instead establish a higher advanced biofuel volume and corresponding lower conventional biofuel volume, while keeping the total renewable fuel volume the same. While this alternative would require larger volumes of potentially lower GHG fuels (*i.e.,* advanced biofuels), we expect the actual impact on GHG emissions to be minimal given that much of the shortfall in conventional biofuel is expected to be made up with additional volumes of advanced biofuels regardless. Moreover, since the vast majority of ethanol is made from corn starch and therefore cannot qualify as advanced biofuel regardless of its GHG reductions,[131] this alternative would reduce incentives for increased use of higher-level ethanol blends and may negatively affect investment in infrastructure for the distribution of such blends. By contrast, maintaining the statutory implied volume of conventional renewable fuel preserves greater incentives for investment in the infrastructure for higher-level ethanol blends and therefore has the potential to induce greater renewable fuel consumption in future years. Moreover, the advanced carryover RIN bank going into 2022 is expected to be very low, further favoring a lower advanced biofuel standard.[132]

We note that this approach of maintaining the statutory implied conventional and non-cellulosic advanced biofuel volumes is inherently consistent with the volumes Congress itself established in EISA. It is also consistent with EPA's policy in prior years, during which we have never established prospective volume requirements lower than the implied statutory volume targets, with a single exception.[133] While we have discretion to establish different volumes, we continue to believe that maintaining the implied statutory volumes strikes the proper balance based upon our consideration of the reset factors.

As with 2020 and 2021, the 2022 standards are being promulgated late; that is, after the statutory deadline of November 30, 2021. Since this rule is being finalized during 2022, the 2022 standards will be partially retroactive and partially prospective. Despite the lateness and partial retroactivity of this rule, we nonetheless believe it is appropriate to establish increased volumes for 2022. First, the 2022 volumes appropriately balance the statutory goal of increasing renewable fuel use with mitigating burdens on obligated parties. Since the 2022 standards are partially prospective, we expect it will induce the market to produce, import, and consume additional biofuels in 2022. This is in contrast to the 2020 and 2021 standards, which as noted above, are entirely retroactive. Moreover, we find that the market is capable of meeting the increased 2022 volumes through increased biofuel use, and any shortfall can be met by carryover RINs. Overall, we think the 2020–2022 volumes in the aggregate strike the proper policy balance overall between the statutory purpose of increasing biofuel use with mitigating burdens on obligated parties. We further discuss the intertwined nature of these standards in Section III.B.3.

Second, we are providing significant lead time for 2022. Obligated parties will have at least 11 months after the publication of this action in the **Federal Register** before having to demonstrate compliance with their 2022 obligations.[134] Moreover, the proposed rule provided parties with additional

[131] CAA section 211(o)(1)(B)(i).

[132] See ''Carryover RIN Bank Calculations for 2020–2022 Final Rule,'' available in the docket for this action.

[133] We prospectively established a volume for conventional renewable fuel for 2016 (14.5 billion gallons) that was lower than the statutory implied volume (15 billion gallons). In doing so, we exercised our ''inadequate domestic supply'' waiver authority based largely on the limited demand for ethanol in the United States. That decision that was subsequently set aside by the D.C. Circuit in *ACE,* as exceeding our waiver authority. We further discuss the *ACE* decision and our response to the Court's remand in Section IV.

[134] See 40 CFR 80.1451(f)(1)(i)(B)(*4*); 87 FR 5696 (February 2, 2022).

advance notice. We proposed the 2022 volumes in late 2021 and are finalizing very similar volumes in this action. Specifically, we are finalizing the same implied conventional and non-cellulosic advanced biofuel volumes and a slightly lower cellulosic biofuel volume based on the same methodology with updated data.

We also continue to provide compliance flexibilities such as access to carryover RINs and carryforward deficits. As discussed above, the revision of the 2020 volumes to those actually supplied preserves the carryover RIN bank and helps facilitate compliance, including for 2022.

Finally, we have considered and rejected multiple alternatives to the 2022 volumes we are finalizing. As discussed above, these include requiring lower 2022 volumes while not revising the 2020 standards, requiring lower 2022 volumes but higher 2020 and 2021 volumes, and requiring higher 2022 advanced biofuel volumes but lower 2022 implied conventional volumes. We address additional alternatives raised by commenters for volumes for all three years in the RTC document.

We also acknowledge that we are late in resetting the 2022 volumes. We nonetheless believe that this late exercise of the reset authority is appropriate for similar reasons as for 2020 and for 2021, including that we are obligated to reset the 2022 volumes, we have previously told the public that we intended to do so, and the statute requires us to reset 2022 if we reset 2020 and 2021. Moreover, all the 2022 volumes we are resetting are also independently justified under our cellulosic waiver authority. The exercise of that authority is also late, but it is justified for substantively the same reasons as the retroactive establishment of the 2022 standards described above.

The volumes of cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel we are finalizing for 2022 are shown in Table III.E–1. The BBD volume for 2022 is also included in Table III.E–1 for context, although we discuss it in Section III.F.

TABLE III.E–1—RFS VOLUMES FOR 2022

[Billion RINs]

Category	Volume
Cellulosic Biofuel	0.63
Biomass-Based Diesel	[a] 2.76
Advanced Biofuel	5.63
Total Renewable Fuel	20.63

[a] The BBD volume for 2022 is in physical gallons (rather than RINs).

F. BBD Volume for 2022

As described above, we are finalizing an advanced biofuel volume consistent with the statutory implied non-cellulosic advanced biofuel volume of 5 billion gallons. This represents an increase of 500 million gallons from the statutory implied non-cellulosic advanced biofuel volume of 4.5 billion gallons in prior years. Consistent with this and with the proposed rule, we are also increasing the BBD volume requirement by the same energy-equivalent amount (330 million physical gallons) to 2.76 billion gallons.

As in recent years, we believe that excess volumes of BBD (above 2.76 billion gallons) will be used in 2022 to satisfy the advanced biofuel standard. Historically, the BBD standard has not independently driven the use of BBD in the market. This is due to the nested nature of the standards and the competitiveness of BBD relative to other advanced biofuels. Instead, the advanced biofuel standard, and occasionally the total renewable fuel standard, have driven the use of BBD in the market. We believe this trend will continue in 2022, and that the 2022 advanced biofuel and total renewable standards will drive the use of BBD in the market in 2022.

At the same time, we think it is important to maintain space for other advanced biofuels to participate in the RFS program. Although the BBD industry has matured over the past decade, the production of other advanced biofuels continues to be relatively low and uncertain. Maintaining this space for other advanced biofuels can facilitate in the long-term increased commercialization and use of other advanced biofuels, which may have superior environmental benefits and lower costs relative to BBD. Conversely, we do not think that increasing the size of this space is necessary for 2022 given that only small quantities of these other advanced biofuels have been used in recent years relative to the space we have already provided.

The BBD volume for 2022 is consistent with our policy in recent annual rules, where we set the BBD volume consistent with the change, if any, in the non-cellulosic advanced biofuel volume. In the 2019 final rule, we set the 2020 BBD volume at 2.43 billion gallons. This was an increase from the prior year's BBD volume by the same energy-equivalent amount (330 million physical gallons) as the increase in the 2019 non-cellulosic advanced biofuel volume, which had increased by 500 million ethanol-equivalent gallons from 4 to 4.5 billion gallons. By contrast, in the 2020 final rule, when the 2020 non-cellulosic advanced biofuel volume remained constant at 4.5 billion gallons, we also maintained the 2021 BBD volume at 2.43 billion gallons. In both rules, we preserved a significant space for other advanced biofuels to compete, approximately equal to 850 million RINs (approximately equal to 566 million physical gallons). In reality, only 334 million RINs of other advanced biofuel was available in 2020 and 227 million RINs in 2021, suggesting that we do not need to further increase the space for other advanced biofuels. In this rule, we are continuing to maintain space for other advanced biofuels. Since the non-cellulosic advanced biofuel volume is increasing by 500 million gallons to 5 billion gallons in 2022, we are increasing the BBD volume by the same energy-equivalent amount, or 330 million physical gallons.[135]

We acknowledge that in finalizing the 2022 BBD volume in this action, we are establishing a late BBD volume. CAA section 211(o)(2)(B)(ii) provides that EPA shall determine the applicable volume 14 months prior to the year for which the standard will apply. That deadline (October 31, 2020) has already passed. The D.C. Circuit in *ACE* has affirmed EPA's ability to promulgate late BBD standards as long as those standards are reasonable.[136] In evaluating the reasonableness of EPA's standards, the court stated that EPA must ''consider[] various ways to minimize the hardship caused to obligated parties.'' [137] As in this case of previous annual rules, we believe that

[135] We acknowledge that this increase in the 2022 BBD volume is slightly different than our actions in the 2019 and 2020 final rules. In those rules, we were setting the BBD volumes for the subsequent year. For instance, in the 2019 rule, we increased the 2020 BBD volume based on increases in the 2019 non-cellulosic advanced volume. In this rule, we are setting the 2022 BBD and advanced volumes at the same time. In addition, because we established the 2021 cellulosic biofuel and advanced biofuel volumes retroactively at the levels actually consumed, the increase in non-cellulosic advanced biofuel from 2021 to 2022 is actually about 490 million gallons, or slightly less than the change in the implied statutory non-cellulosic advanced biofuel volume of 500 million gallons. Regardless of these differences, EPA's goal is to maintain approximately the same space for other advanced biofuels as in recent prospective annual rules. We accomplish this by raising the BBD volume by 330 million physical gallons (equivalent to 500 million ethanol-equivalent gallons). We note that even were we to raise the BBD volume by only 490 million ethanol-equivalent gallons, we expect no impact on the market given that the advanced biofuel and total renewable fuel standards are driving BBD use in 2022.

[136] *ACE* at 721.

[137] *Id.* (quoting *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909, 920 (D.C. Cir. 2014)).

the advanced biofuel and total renewable fuel standards for 2022 will drive the use of BBD in the market, and thus, the BBD standard we establish is unlikely to result in additional burdens on obligated parties. Moreover, as with the other 2022 standards, we have provided parties with significant lead time. Additionally, the volume requirement we are finalizing is consistent with our treatment of the BBD volume requirement in the past (*i.e.,* increasing the BBD volume requirement in accordance with increases in the implied statutory non-cellulosic advanced volume so as to preserve space for other advanced biofuels). Further, the same compliance flexibilities available for the other standards also apply to BBD. We further discuss the BBD standard in Chapter 10 of the RIA and in the RTC document.

G. Summary of the RFS Volumes for 2020–2022

The volumes for 2020, 2021, and 2022 are summarized in Table III.G–1.

TABLE III.G–1—RFS VOLUMES FOR 2020, 2021, AND 2022

[Billion RINs]

Category	2020	2021	2022
Cellulosic Biofuel	0.51	0.56	0.63
Biomass-Based Diesel [a]	[b] 2.43	[c] 2.43	2.76
Advanced Biofuel	4.63	5.05	5.63
Total Renewable Fuel	17.13	18.84	20.63

[a] The BBD volumes are in physical gallons (rather than RINs).
[b] The BBD volume for 2020 was established in the 2019 final rule (83 FR 63704, December 11, 2018).
[c] The BBD volume for 2021 was established in the 2020 final rule (85 FR 7016, February 6, 2020).

H. Quantitative Impacts of the Volumes

As one aspect of our analysis, we estimated certain quantitative impacts of the volumes. As explained in Chapter 2.2 of the RIA, we have used a baseline of the volumes actually supplied in 2020 to quantitatively assess the impacts of this rule, and thus the 2020 volumes have no costs or benefits. We therefore focus on the quantitative impacts of the 2021 and 2022 volumes.[138] We recognize that there are other possible baselines that could be used as a point of comparison, and that the choice of baseline significantly influences our impact analyses. A potential alternative baseline is the volumes of renewable fuels that would be used each year from 2020–2022 in the absence of RFS obligations (a ''No RFS baseline''). While we have generally not used this alternative baseline in this rule for purposes of our quantitative analysis, Chapter 2.2 of the RIA contains a brief description of what such a baseline might look like, and how using such a baseline might affect our analysis of the impacts of this rule. Moreover, many of the qualitative analyses do consider a No RFS baseline.

For some of the statutory factors (fuel costs, cost to transport goods, and energy security benefits), we were able to quantify the expected impacts and also monetize the associated societal impacts.[139] Information and specifics on how fuel costs and the cost to transport goods are calculated are presented in Chapter 9 of the RIA, while energy security benefits are discussed in Chapter 4 of the RIA. A summary of the fuel costs to society and energy security benefits are shown in Tables III.H–1 and 2. As noted above, these numbers estimate the impacts of the 2021 and 2022 volumes relative to a 2020 volumes baseline; that is, the impacts of the use of renewable fuel in 2021 and 2022 relative to the use of renewable fuel in 2020. This is not the same as estimating the causal impacts of this rule. As described earlier in this section, because this rule is retroactive, it is not expected to affect renewable fuel use or production in 2020 or 2021 or to affect the statutory factors (including costs and energy security) insofar as they are based on renewable fuel use or production in those years. While this rule is expected to cause changes in renewable fuel use and production in 2022, the renewable fuel volumes analyzed for 2022 are also impacted by other factors. These include, for instance, the increased use of ethanol as E10 given the projected increase in gasoline consumption in 2022. We further discuss these issues in Chapter 2 of the RIA.

TABLE III.H–1—FUEL COSTS OF THE FINAL VOLUMES

[2021 dollars, millions] [a]

Year	Costs [b]
2021	1,257
2022:	
Excluding Supplemental Volumes	5,260
Including Supplemental Volumes	5,720

[a] These costs represent the costs of producing and using biofuels relative to the petroleum fuels they displace. They do not include other factors, such as the potential impacts on soil and water quality.
[b] In the proposal, costs for 2022 were also presented using 3 percent and 7 percent discount rates, following guidance to federal agencies on development of regulatory analyses.[140] Since 2022 is now the current year, no discounting of future benefits is necessary for this final rule.

TABLE III.H–2—ENERGY SECURITY BENEFITS OF THE FINAL VOLUMES

[2021 dollars, millions]

Year	Benefits [a]
2021	67
2022:	
Excluding Supplemental Volumes	217
Including Supplemental Volumes	227

[a] In the proposal, energy security benefits for 2022 were also presented using 3 percent and 7 percent discount rates, following guidance to federal agencies on development of regulatory analyses.[141] Since 2022 is now the current year, no discounting of future benefits is necessary for this final rule.

[138] The below costs and benefits for both 2021 and 2022 are calculated relative to the actual volumes of renewable fuel used in 2020. The 2022 values therefore reflect the incremental volumes for both 2021 and 2022.

[139] Due to the uncertainty related to the GHG emission impacts of this rule (discussed in further detail in Chapter 3.2 of the RIA) we have not included a quantified projection of the GHG emission impacts of the rule. However, to provide perspective regarding the scope of the potential benefits, Chapter 3.2.2 of the RIA illustrates potential GHG benefits associated with the volumes in this rule using the lifecycle GHG values calculated in the 2010 RFS final rule and other prior actions.

[140] Office of Management and Budget (OMB). *Circular A–4.* September 17, 2003.

Other factors, such as job creation, the price and supply of agricultural commodities, and the impact on food prices are quantified but the societal impacts have not been monetized. We also provided a quantitative estimate of the expected annual rate of future commercial production of renewable fuels. Further information can be found in the RIA. We were not able to quantify many of the impacts of this rulemaking, including those of statutory factors such as environmental impacts and rural economic development. Regardless of whether or not we were able to quantify or monetize a particular impact, we considered each of the statutory factors. As we explained in Section II, the statute does not require quantification. We also did not rely solely on the quantitative impacts to determine the policy in this rulemaking. Rather, we find that the volumes established in this rulemaking are appropriate under the reset authority when we balance all of the relevant factors, which are described throughout this preamble and the RIA.

IV. Response to ACE Remand

In addition to finalizing the applicable volume requirements and percentage standards for 2020, 2021, and 2022, in this rulemaking we are also addressing the remand of the 2014–2016 annual rule [142] by the D.C. Circuit in *ACE*.[143] Previously, in the 2020 proposal, we proposed to address the D.C. Circuit's remand by retaining the original 2016 total renewable fuel standard.[144] We received many comments both in support of and against this approach.[145] In the 2020 final rule, we deferred taking action in response to the remand.[146] We are now addressing the remand through supplemental total renewable fuel volume requirements totaling 500 million gallons spread over two years.[147] We are finalizing a 250-million-gallon supplemental standard to be applied in 2022 coupled with the intention of proposing an additional 250-million-gallon supplemental standard in a subsequent action for 2023. We are establishing the supplemental total renewable fuel volume requirement and the corresponding percentage standard for 2022 in this rulemaking. This section describes the relevant aspects of the 2014–2016 annual rule, the court's decision, EPA's responsibilities following the court's remand, and our approach.

A. Reevaluating the 2014–2016 Annual Rule

1. The 2016 Renewable Fuel Standard

On December 14, 2015, EPA promulgated a rulemaking establishing the volume requirements and percentage standards for 2014, 2015, and 2016.[148] In establishing those standards for 2016, we utilized the cellulosic waiver authority under CAA section 211(o)(7)(D) to lower the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements, and the general waiver authority under CAA section 211(o)(7)(A) to lower total renewable fuel by an additional increment.[149]

As an initial step, under CAA section 211(o)(7)(D), we lowered the cellulosic biofuel volume requirement by 4.02 billion gallons, to the projected production of cellulosic biofuel for 2016, as required by the statute.[150] Using that same authority, we then elected to reduce the advanced biofuel and total renewable fuel volumes. We did not reduce the advanced biofuel volume requirement by the full 4.02 billion gallons that was permitted under this authority, but rather by a lesser 3.64 billion gallons that resulted in an advanced biofuel volume requirement that was ''reasonably attainable.'' [151] This allowed some advanced biofuel to ''backfill'' for the shortfall in cellulosic biofuel. We then reduced the total renewable fuel volume by an amount equivalent to the reduction in advanced biofuel in accordance with our longstanding interpretation that when making reductions to advanced biofuel and total renewable fuel under CAA section 211(o)(7)(D), the best reading of the statute is to reduce them both by the same amount.[152]

As a second step, under CAA section 211(o)(7)(A), under a finding of inadequate domestic supply, we further lowered the total renewable fuel standard by 500 million gallons for 2016.[153] In assessing ''inadequate domestic supply,'' we considered the availability of renewable fuel to consumers. Based on such demand-side considerations, we made the additional 500 million gallon reduction in the total renewable fuel requirement.

The 2016 total renewable fuel standard was challenged in court. In an opinion issued on July 28, 2017, the D.C. Circuit vacated EPA's use of the general waiver authority under a finding of inadequate domestic supply to reduce the 2016 total renewable fuel standard, the second step of setting the 2016 total renewable fuel standard.[154] The court in *ACE* held that EPA had improperly focused on the availability of renewable fuel to consumers for use in their vehicles, and that the statute instead requires a ''supply-side'' assessment of the volumes of renewable fuel that can be supplied to refiners, blenders, and importers.[155] Other components of EPA's interpretation of ''inadequate domestic supply'' were either upheld by the court in *ACE* (*e.g.,* EPA need not consider carryover RINs as a ''supply source of renewable fuel for purposes of determining the supply of renewable fuel in a given year'') or were not challenged (*e.g.,* EPA's consideration of biofuel imports as part of the domestic supply). EPA's use of the cellulosic waiver authority to provide the initial reduction in total renewable fuel was also upheld by the court. In establishing volume requirements for subsequent years, EPA has applied the court's holding and not reduced volumes under a finding of inadequate domestic supply.[156]

2. Agency Responsibility

The court in *ACE* upheld EPA's volume requirements for advanced biofuel, BBD, and cellulosic biofuel; there is, therefore, no need for EPA to adjust those 2016 final volume requirements, or to take further action with regard to these standards in light of the court's decision. The court also upheld EPA's use of the cellulosic waiver authority to reduce the 2016 total renewable fuel volume requirement. The court only vacated EPA's decision to further reduce that requirement under the ''inadequate domestic supply'' waiver authority,

[141] Office of Management and Budget (OMB). *Circular A–4.* September 17, 2003.

[142] 80 FR 77420 (December 14, 2015).

[143] 864 F.3d 691 (2017).

[144] 84 FR 36762 (July 29, 2019).

[145] See Docket No. EPA–HQ–OAR–2019–0136.

[146] 85 FR 7016 (February 6, 2020).

[147] We also refer to the supplemental total renewable fuel volume requirement as a ''supplemental standard'' throughout this preamble.

[148] 80 FR 77420 (December 14, 2015). The rule also established BBD volume for 2017.

[149] 80 FR 77439 (December 14, 2015).

[150] 80 FR 77499 (December 14, 2015).

[151] 80 FR 77427.

[152] *Id.*

[153] 80 FR 77444.

[154] *ACE,* 864 F.3d 691.

[155] *Id.* at 696, 707.

[156] We note that the precedential effect of the *ACE* decision has governed subsequent RFS annual rules. Compare, *e.g.,* 82 FR 34229 & n.82 (July 21, 2017) (2018 annual rule proposal, issued prior to *ACE*) (soliciting comment on whether it would be appropriate to exercise the inadequate domestic supply waiver authority based on the maximum reasonably achievable volume'' of renewable fuel, which incorporates demand-side considerations), with 82 FR 46177 (Oct. 4, 2017) (2018 annual rule availability of supplemental information and request for comment, issued after *ACE*) (recognizing, under *ACE,* that EPA may not consider demand-side constraints in determining inadequate domestic supply).

remanding this issue to EPA for further consideration consistent with the court's opinion.[157] EPA's obligation is thus to reevaluate the 2016 total renewable fuel volume requirement in accordance with the court's decision.

B. Consideration of Approaches for Responding to the ACE Remand

As discussed in the previous section, EPA waived 500 million gallons of total renewable fuel volume associated with the 2016 volume requirements. In 2017, after the compliance year had passed, and after obligated parties had demonstrated compliance with those requirements, we received the *ACE* court's decision rejecting EPA's use of the general waiver authority under a finding of inadequate domestic supply to reduce volumes as being beyond our statutory authority and remanding the rulemaking action back to EPA. Given that compliance demonstrations had already occurred, and we had proposed volume requirements for 2017 factoring in the 2016 standards as originally promulgated,[158] we were faced with the question of whether we should reopen 2016 compliance, or factor the waived volume into a future standard, as discussed further in this section. In this action, we are taking an initial step to address the court's remand through a supplemental standard of 250 million gallons of total renewable fuel in 2022, with the intent of proposing an additional supplemental standard of 250 million gallons of total renewable fuel to be required in 2023 in a subsequent action. As the court invalidated only the 500 million gallon total renewable fuel reduction, we are therefore limiting our response to the remand to only the 2016 total renewable fuel standard and the corresponding 500 million gallon reduction stemming from our use of the general waiver authority. Since total renewable fuel is not a subcategory nested within any other volume category, this approach will not affect the other standards.

1. Response to the ACE Remand

We proposed to address the *ACE* decision by applying a 250-million-gallon supplemental standard in 2022 with the intention of proposing an additional 250-million-gallon supplemental standard for 2023 in a subsequent rulemaking action. We received comments both in support of such an approach, and against such an action. Despite comments suggesting we should not impose a supplemental standard, or that we should impose a lesser supplemental standard, we are finalizing the supplemental standard as proposed.

Under this approach, the original 2016 standard for total renewable fuel will remain unchanged and the compliance demonstrations that obligated parties made for it will likewise remain in place. A supplemental standard for 2022 will thus avoid the difficulties associated with reopening 2016 compliance, as discussed below. This supplemental standard will have the same practical effect as increasing the 2022 total renewable fuel volume requirement by 250 million gallons, as compliance will be demonstrated using the same RINs as used for the 2022 standard. The percentage standard for the supplemental standard is calculated the same way as the 2022 percentage standards (*i.e.,* using the same gasoline and diesel fuel projections), such that the supplemental standard is additive to the 2022 total renewable fuel percentage standard. This approach will provide a meaningful remedy in response to the court's vacatur and remand in *ACE* and will effectuate the Congressionally determined renewable fuel volume for 2016, modified only by the proper exercise of EPA's waiver authorities, as upheld by the court in *ACE* and in a manner that can be implemented in the near term. It is with emphasis on these considerations that we are taking a different approach from the one proposed in the 2020 proposal.[159]

We are treating such a supplemental standard as a supplement to the 2022 standards, rather than as a supplement to standards for 2016, which has passed. In order to comply with any supplemental standard, obligated parties will need to retire available RINs; it is thus logical to require the retirement of available RINs in the marketplace at the time of compliance with this supplemental standard. As discussed below, it is no longer possible for obligated parties to comply with a 500-million-gallon 2016 obligation using 2015 and 2016 RINs as required by our regulations. Thus, compliance with a supplemental standard applied to 2016 would be impossible barring EPA reopening compliance for all years from 2016 onward. By applying the supplemental standard to 2022 instead of 2016, RINs generated in 2021 and 2022 will be used to comply with the 2022 supplemental standard. Additionally, as provided by our regulations, RINs generated in 2015 and 2016 could only be used for 2015 and 2016 compliance demonstrations,[160] and obligated parties had an opportunity at that time to utilize those RINs for compliance or sell them to other parties, while ''banking'' RINs that could be utilized for future compliance years.

In applying the supplemental standard to 2022, we are treating the supplemental standard like a 2022 standard in all respects. That is, producers and importers of gasoline and diesel fuel that are subject to the 2022 standards are also subject to the supplemental standard. The applicable deadlines for attest engagements and compliance demonstrations that apply to the 2022 standards also apply to the supplemental standard. Due to the 2022 supplemental standard being administratively included in the 2022 standard, the gasoline and diesel fuel volumes used by obligated parties to calculate their obligations to satisfy the 2022 supplemental standard will be their 2022 gasoline and diesel production and importation. Additionally, obligated parties may effectively use 2021 RINs for up to 20 percent of their 2022 supplemental standard as allowed under the RFS regulations.[161] We intend to provide more guidance for obligated parties regarding submitting annual compliance reports for the 2022 compliance year on our website closer to the 2022 annual compliance reporting deadline.[162]

As described more fully in Section III, the volume requirements for 2022 are market-forcing, requiring a growth in renewable fuel volumes that we believe is achievable. We nevertheless believe that compliance with the 2022 supplemental standard in addition to the 2022 annual standards is feasible and can be achieved through the actual use of renewable fuels, including imports, in 2022 as opposed to carryover RINs. However, if the 2022 supplemental standard cannot be fully met through the supply of additional renewable fuel volumes in 2022, it could be met through a drawdown of the carryover RIN bank.[163] After compliance with the 2019–2021 standards, the carryover RIN bank is expected to consist of approximately

[157] *Id.* at 703.

[158] 81 FR 34778 (May 31, 2016).

[159] See *FCC* v. *Fox,* 556 U.S. 502 (2009), acknowledging an agency's ability to change policy direction.

[160] 2016 RINs could also be used for up to 20 percent of an obligated party's 2017 compliance demonstrations.

[161] See 40 CFR 80.1427(a)(5).

[162] Information and guidance related to annual compliance reporting instructions for obligated parties will be available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/how-report-quarterly-and-annually-renewable-fuel.*

[163] See Section III.B for a discussion of carryover RINs.

1.83 billion total carryover RINs for compliance in 2022.[164] We acknowledge that the size of the carryover RIN bank may change somewhat by the 2022 compliance deadline. However, given the projected size of the carryover RIN bank in light of the revised 2020 standards, we think it is virtually certain that more than 250 million total carryover RINs will be available in 2022.

We recognize that in the 2020 proposal, we indicated that a supplemental standard would result in a drawdown of the carryover RIN bank. We do not believe that is the case today, with a 250-million-gallon supplemental standard as opposed to the full 500 million gallons, and supported by our analysis in Chapter 5 of the RIA, demonstrating that the market is capable of achieving the supplemental volumes with increased biofuel use. Nonetheless, we acknowledge that the market has the option of using carryover RINs to meet the supplemental standard. Such use would be consistent with a purpose of the carryover RIN bank. As we stated in the 2020 final rule, ''[t]he current bank of carryover RINs provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program.'' [165] As discussed in Section III.B, we continue to believe that a significant carryover RIN bank is fundamental to the functionality and success of the RFS program.

Attempting to restore waived volumes many years after the close of the compliance period brings with it significant challenges, particularly in the context of this final action where we are already setting market-forcing standards for 2022. By phasing in the 500 million gallons of total renewable fuel associated with the *ACE* remand through the implementation of two supplemental standards over two compliance years, we believe that we can lessen both the disruption to the market and the burden on obligated parties and maintain the functionality of the carryover RIN bank. Imposing two 250-million-gallon supplemental standards in two compliance years, as opposed to one 500-million-gallon supplemental standard in a single compliance year, provides additional notice for both obligated parties and the renewable fuel industry about the additional volume requirements and lessens the additional requirements for each compliance year. This should increase the likelihood that the volumes are met with additional renewable fuel use and, in turn, lessen the likelihood that the carryover RIN bank is drawn down.

In summary, we are implementing a 250-million-gallon supplemental standard in 2022 and intend to propose an additional 250-million-gallon supplemental standard in 2023, totaling 500 million gallons, which represent the reduction in the 2016 total renewable fuel volume improperly waived under the general waiver authority. This approach addresses our obligation to respond to the *ACE* remand while accounting for the unique timing of imposing a 2016 requirement in 2022. This approach allows obligated parties to comply with the 2022 supplemental standard using 2021 and 2022 RINs.

2. Consideration of Alternatives

In the proposed rule, we laid out our thinking regarding an alternative approach of reopening 2016 compliance. We also considered maintaining the 2016 standards, as finalized in 2016, and as proposed in the 2020 proposal. Finally, we considered additional reductions in 2016 volumes utilizing our cellulosic or general waiver authority as suggested by several commenters. These alternatives are further discussed, and rejected, in Section 8 of the RTC document.

C. Demonstrating Compliance With the 2022 Supplemental Standard

We will prescribe formats and procedures as specified in 40 CFR 80.1451(j) for how obligated parties will demonstrate compliance with the 2022 supplemental standard that simplifies the process in this unique circumstance.[166] Although the 2022 supplemental standard is a regulatory requirement separate from and in addition to the 2022 total renewable fuel standard, obligated parties will submit a single annual compliance report for both the 2022 annual standards and the supplemental standard. Obligated parties will only report a single number for their total renewable fuel obligation in the 2022 annual compliance report.[167] Obligated parties only need to submit a single annual attest engagement report for the 2022 compliance period that covers both the 2022 annual standards and the 2022 supplemental standard.[168] If we set a 2023 supplemental standard as intended, we intend to use the same approach for the annual compliance demonstration for the 2023 compliance period as well.

To assist obligated parties with this unique compliance situation, we intend to issue guidance with instructions on how to calculate and report the values to be submitted in the 2022 compliance reports.[169]

D. Authority and Consideration of the Benefits and Burdens

In establishing the 2016 total renewable fuel standard, EPA waived the required volume of total renewable fuel by 500 million gallons using the inadequate domestic supply general waiver authority. The use of that waiver authority was vacated by the court in *ACE* and the rule was remanded to the EPA. In order to remedy our improper use of the inadequate domestic supply general waiver authority, we find that it is appropriate to treat our authority to establish a supplemental standard at this time as the same authority used to establish the 2016 total renewable fuel volume requirement—CAA section 211(o)(3)(B)(i)—which requires EPA to establish percentage standard requirements by November 30 of the year prior to which the standards will apply and to ''ensure'' that the volume requirements ''are met.'' EPA exercised this authority for the 2016 standards once already. However, the effect of the *ACE* vacatur is that there remain 500 million gallons of total renewable fuel from the 2016 statutory volumes that were not included under the original exercise of EPA's authority under CAA section 211(o)(3)(B)(i). We are now utilizing the same authority to correct our prior action, and ''ensure'' that the

[164] As noted in Section III.B, we project that there will be 1.83 billion total carryover RINs after compliance with the 2019 standards. Since we are setting both the 2020 and 2021 volume requirements at the actual volume of renewable fuel consumed in those years, 1.83 billion total carryover RINs will be available for compliance with the 2022 standards as well. The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Final Rule,'' available in the docket for this action.

[165] 85 FR 7020–22 (February 6, 2020).

[166] We note that we are not changing the reporting regulations at 40 CFR 80.1451(a), as we do not believe that regulatory changes are needed to accommodate annual compliance demonstration for the 2022 supplemental standard.

[167] Obligated parties demonstrate annual compliance by following the reporting instructions entitled, ''Instructions for RFS0304: RFS Annual Compliance Report'' (RFS0304 report). A copy of these reporting instructions is available in the docket of this action. Obligated parties will combine the 2022 total renewable fuel standard with the 2022 supplemental standard in ''Field 18'' of the RFS0304 report. This combined value is then multiplied by the obligated gasoline and diesel fuel volume reported as specified in reporting instructions for ''Field 20'' of the RFS0304 report.

[168] We are not modifying the deadline for the attest engagement reports for the 2022 compliance period in this action.

[169] A link to this guidance will be available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/how-report-quarterly-and-annually-renewable-fuel.*

volume requirements ''are met,'' and we are doing so significantly after November 30, 2015. Therefore, we have considered how to balance benefits and burdens and mitigate hardship by our late issuance of this standard. Additionally, as we have in the past, we rely on our authority in CAA section 211(o)(2)(A)(i) to promulgate late standards.[170] CAA section 211(o)(2)(A)(i) requires that EPA ''ensure'' that ''at least'' the applicable volumes ''are met.'' [171] Because the D.C. Circuit vacated our waiver of 500 million gallons of total renewable fuel from the original 2016 standards, we are now taking action to ensure that at least the applicable volumes from 2016 are ultimately met. We have determined that the appropriate means to do so is through the use of two 250 million gallon supplemental standards, one in 2022, as finalized in this action, and in 2023, as we intend to propose in a subsequent action.

We have sought to mitigate the burdens of a late and partially retroactive standard by implementing a supplemental standard that applies for the 2022 compliance year. Although we established a total renewable fuel standard in 2016, we did so while erroneously waiving 500 million gallons of total renewable fuel through the use of our general waiver authority. In this action, we are beginning to remedy that error by requiring an additional 250 million gallon total renewable fuel volume requirement in the 2022 compliance year.[172]

As noted in Section II.C, in *ACE* and two prior cases, the court upheld EPA's authority to issue late renewable fuel standards, even those applied retroactively, so long as EPA's approach is reasonable.[173] EPA must consider and mitigate the burdens on obligated parties associated with a delayed rulemaking.[174] When imposing a late or retroactive standard, we must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[175] The approach we are taking in this action would implement a late standard, with partially retroactive effects, as described in these cases. Obligated parties made their RIN acquisition decisions in 2016 based on the standards as established in 2016 and they may have made different decisions had we not reduced the 2016 total renewable fuel standard by 500 million gallons using the general waiver authority. Were EPA to create a supplemental standard for 2016 designed to address the use of the general waiver authority in 2016, we would be imposing a wholly retroactive standard on obligated parties, but because the supplemental standard will be complied with in the 2022 compliance year, it will instead be a late standard with partially retroactive effects. Pursuant to the court's direction, we have carefully considered the benefits and burdens of our approach and considered and mitigated the burdens to obligated parties caused by the lateness.

We acknowledge that in the 2020 proposal, we stated that a supplemental standard would ''impose a significant burden on obligated parties'' that would ''be unduly burdensome and inappropriate'' and lack ''any corresponding benefit as any additional standard cannot result in additional renewable fuel use in 2016.'' [176] Our approach mitigates the associated burdens or even entirely avoids most of the burdens we described in the 2020 proposal. As an initial matter, we believe that the combined 2022 total renewable fuel obligation and the supplemental standard can be met with actual use of renewable fuel in 2022. Additionally, the current size of the carryover RIN bank is sufficient to mitigate the burden on obligated parties from a supplemental standard and spreading the 500 million gallon volume over two compliance years also mitigates the burdens on the carryover RIN bank, should parties choose to comply utilizing carryover RINs.

We believe that the approach described in this action provides benefits that outweigh potential burdens. Consistent with the 2016 renewable fuel volume established by Congress, our supplemental standard for 2022 and intended supplemental standard for 2023 are in total equivalent to the volume of total renewable fuel that we inappropriately waived for the 2016 total renewable fuel standard. The use of these supplemental standards phased across two compliance years provides a meaningful remedy to the D.C. Circuit's vacatur of EPA's use of the general waiver authority and remand of the 2016 rule in *ACE.* While this action cannot result in additional renewable fuel used in 2016, it can result in additional fuel use in 2022. We believe that that while the additional volume in 2022 will put increased pressure on the market, it is nevertheless feasible and achievable.

We have carefully considered and designed this approach to mitigate any burdens on obligated parties. We have considered the availability of RINs to satisfy this additional requirement. We are imposing a supplemental standard to the 2022 standards that will apply in the 2022 compliance year. Doing so allows 2021 and 2022 RINs to be used for compliance with the 2022 supplemental standard, in keeping with existing RFS regulations. We believe there will be a sufficient number of 2021 and 2022 RINs to satisfy the 2022 supplemental standard.

Second, we provide significant lead-time for obligated parties by imposing this standard as supplemental to the 2022 standard. Obligated parties will have the same amount of additional time to comply with this standard as the 2022 standard, as discussed in Section III.E.

Third, we are providing multiple mechanisms to mitigate the compliance burden. One step is to designate that the response to the *ACE* remand will be a supplement to the 2022 standards. This approach not only allows the use of 2021 and 2022 RINs for compliance with the 2022 supplemental standard, as described earlier, but it also avoids the need for obligated parties to revise their 2016 (and potentially 2017, 2018, 2019, etc.) compliance demonstrations, which would be a burdensome and time-consuming process. In addition, our approach allows obligated parties to satisfy both the 2022 annual standards and the supplemental standard in a single set of compliance and attest engagement demonstrations. We are also extending the same compliance flexibility options already available for the 2022 annual standards to the 2022 supplemental standard, including allowing the use of carryover RINs and deficit carryforward subject to the conditions of 40 CFR 80.1427(b)(1). We are also applying a supplemental standard for 2022 that partially addresses the remand, and intend to address the remainder of the remanded volumes in a future year. This will allow obligated parties and renewable fuel producers additional lead time to meet the standard.

[170] In promulgating the 2009 and 2010 combined BBD standard, upheld by the D.C. Circuit in *NPRA* v. *EPA,* 630 F.3d 145 (2010), we utilized express authority under section 7545(*o*)(2). 75 FR 14670, 14718.

[171] See also CAA section 211(*o*)(2)(A)(iii)(I), requiring that ''regardless of the date of promulgation,'' EPA shall promulgate ''compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met.''

[172] As noted earlier, we intend to propose an additional 250-million-gallon supplemental standard for 2023 in a subsequent action.

[173] See *ACE,* 864 F.3d at 718; *Monroe Energy, LLC* v. *EPA,* 750 F.3d at 920; *NPRA,* 630 F.3d at 154–58.

[174] *ACE,* 864 F.3d at 718.

[175] *NPRA,* 630 F.3d at 154–58.

[176] 84 FR 36788 (July 29, 2019).

Lastly, we have carefully considered alternatives, including retaining the 2016 total renewable fuel volume as described in the 2020 proposal, and additional waivers.

On balance, we find that requiring an additional 250 million gallons of total renewable fuel to be complied with through a supplemental standard for 2022 (with our intention to do so again in 2023) to be an appropriate response to the court's vacatur and remand of our use of the general waiver authority to waive the 2016 total renewable fuel standard by 500 million gallons.

E. Calculating a Supplemental Percentage Standard for 2022

The formulas in 40 CFR 80.1405(c) for calculating the applicable percentage standards were designed explicitly to associate a percentage standard for a particular year with the volume requirement for that same year. The formulas are not designed to address the approach that we are establishing in this action, namely the use of a 2016 volume requirement to calculate a 2022 percentage standard. Nonetheless, we can apply the same general approach to calculating a supplemental percentage standard for 2022.

The numerator in the formula in 40 CFR 80.1405(c) is the supplemental volume of 250 million gallons of total renewable fuel. The values in the denominator remain the same as those used to calculate the 2022 percentage standards in Section V.D, which can be found in Table V.D–1. As described in Section V.D, the resulting supplemental total renewable fuel standard percentage standard for a 250-million-gallon volume requirement in 2022 is 0.14 percent.

The supplemental standard for 2022 is a requirement for obligated parties separate from and in addition to the 2022 total renewable fuel standard. The two percentage standards are listed separately in the regulations at 40 CFR 80.1405(a), but in practice obligated parties will need to demonstrate compliance with both at the same time. Thus, the two percentage standards in Section V.D are effectively additive (*i.e.,* 11.59% + 0.14% = 11.73%).

V. Percentage Standards

EPA implements the nationally applicable volume requirements by establishing percentage standards that apply to obligated parties.[177] The obligated parties are producers and importers of gasoline and diesel fuel, as defined by 40 CFR 80.1406(a). The standards are expressed as volume percentages. Each obligated party multiplies the percentage standards by the total volume of all non-renewable gasoline and diesel fuel they produce or import to determine their RVOs.[178] The RVOs are the number of RINs that the obligated party is responsible for procuring to demonstrate compliance with the RFS rule for that year. Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party for each year.

The volumes used to determine the 2020, 2021, and 2022 percentage standards (including the 2022 supplemental standard) are described in Sections III and IV and are shown in Table V–1.

TABLE V–1—VOLUMES FOR USE IN DETERMINING THE APPLICABLE PERCENTAGE STANDARDS

[Billion RINs]

Standard	2020	2021	2022
Cellulosic Biofuel	0.51	0.56	0.63
Biomass-Based Diesel[a]	[b] 2.43	[c] 2.43	2.76
Advanced Biofuel	4.63	5.05	5.63
Total Renewable Fuel	17.13	18.84	20.63
Supplemental Standard	n/a	n/a	0.25

[a] The BBD volumes are in physical gallons (rather than RINs).
[b] The BBD volume requirement for 2020 was established in the 2019 standards rulemaking (83 FR 63704, December 11, 2018).
[c] The BBD volume requirement for 2021 was established in the 2020 standards rulemaking (85 FR 7016, February 6, 2020).

In this section, we also reaffirm the regulatory change to the percentage standard formulas from the 2020 final rule, which account for a projection of the aggregate volume for SREs that we expect to grant for each compliance year. This section also provides our rationale for that projection of exempt gasoline and diesel volume. Additionally, we also describe our intended approach for evaluating SREs going forward.

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to obligated parties are provided in 40 CFR 80.1405(c). The formulas apply to the estimates of the volumes of non-renewable gasoline and diesel fuel—for both highway and nonroad uses—that are projected to be used in the year in which the standards will apply. EIA provides projected gasoline and diesel fuel volumes, but these include projections of ethanol and BBD used in transportation fuel. Since the percentage standards apply only to the non-renewable portions of gasoline and diesel fuel, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel fuel. In addition, transportation fuels other than gasoline or diesel fuel (*e.g.,* natural gas, propane, and electricity from fossil fuels) are not currently subject to the RFS standards, and volumes of such fuels are not used in calculating the annual percentage standards or obligated parties' RVOs.

As specified in the 2010 RFS2 final rule,[179] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. To effectuate this difference between BBD and the other three standards, the formula used to calculate the percentage standard for BBD in 40 CFR 80.1405 includes a factor of 1.5 to convert physical volumes of BBD into ethanol-equivalent volumes. We are applying the 1.5 conversion factor for the calculations of the 2020–2022 BBD percentage standards.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), Congress exempted small refineries from RFS compliance temporarily through December 31, 2010. Congress also

[177] See CAA section 211(o)(3)(B).

[178] 40 CFR 80.1407.

[179] See 75 FR 14670 (March 26, 2010).

provided that small refineries could receive an extension of the exemption beyond 2010 based either on the results of a required Department of Energy (DOE) study or in response to individual SRE petitions demonstrating ''disproportionate economic hardship.'' CAA section 211(o)(9)(B)(i).

In the 2020 final rule, EPA revised certain definitions in the percentage standards formulas at 40 CFR 80.1405(c) to account for a projection of the total exempted volume of gasoline and diesel produced at small refineries, including for those exemptions granted after the final rule. We sought comment on this approach in the proposed rule associated with this action. We are reaffirming our modified definitions in this action and utilizing those definitions to calculate the projected exemptions for 2020, 2021, and 2022.

1. Reaffirmation of the Modified Definitions From the 2020 Final Rule

In the 2020 final rule, we finalized changes to the definitions of two relevant terms in the percentage standard formulas at 40 CFR 80.1405(c), GE_i and DE_i.[180] We stated that these terms represent a projection of the exempted volume of gasoline and diesel fuel, regardless of whether we had adjudicated exemptions for that year by the time of the final rule establishing the percentage standards. The term ''GE_i'', representing the volume of exempt gasoline, was defined as ''the total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.'' Similarly, the term ''DE_i'', representing the volume of exempt diesel, was defined as ''the total amount of diesel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.''

At the time of the 2020 final rule, this approach entailed a change in policy.[181] We acknowledged that we previously did not account for SREs granted after an annual rule, and at times we even suggested that doing so was improper.[182] We set forth several rationales for our change in policy. As we explain below, our rationale for maintaining the 2020 final rule's approach largely overlaps with the rationales we previously presented, but also differs in some respects.

First, the basic legal rationale for the modified definitions remains the same. Namely, while the statute does not specifically require EPA to redistribute exempted volumes in this manner, this is a reasonable interpretation of our authority under *Chevron* v. *Natural Resources Defense Council (NRDC).*[183] Indeed, making this projection harmonizes various statutory provisions. The statute authorizes small refineries to petition for and EPA to grant an exemption based on disproportionate economic hardship ''at any time,'' [184] while also directing EPA to promulgate standards by November 30 of the prior year to ''ensure[ ]'' that the renewable fuel volumes are met.[185] In other words, small refineries may seek and EPA may grant hardship exemptions at any time, including after the percentage standards are established. Meanwhile, EPA has authority to account for a projection of these exemptions in the annual rule to ''ensure'' the renewable fuel volumes.[186] In more concrete terms, accounting for a projection of subsequently granted SREs in establishing the standards better ensures the volumes are met by increasing the standards on the non-exempt obligated parties.

Second, it remains true that this approach is consistent with our previous statements that ''the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' [187] By projecting exempted volumes in advance of issuing annual standards, we can issue a single set of standards for each year without the need for subsequent revisions and the associated uncertainty for obligated parties.

We acknowledge that in this action we are revising the 2020 standards based in part on changes to our SRE policies that rendered the projection in the 2020 final rule inaccurate. However, as we explain in Section III.C, the reconsideration of the 2020 standards is based on unique circumstances, including the significant SRE policy changes and effects of the COVID–19 pandemic on transportation fuel use. This is not a scenario that we expect to recur on a regular or periodic basis.

Third, we believe that we can project the exempt small refinery volume with reasonable accuracy despite the uncertainties associated with this projection. In prior annual rulemakings, we had noted that ''Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed as a result of the percentage standards that we set each November. . .'' [188] as well as the inherent difficulties of projecting exempted small refinery volumes.[189] However, we are projecting only the aggregate exempted volume in a given compliance year. We thus need not wrestle with the difficulties of predicting precisely which refineries will apply or the economic circumstances of specific refineries in a given compliance year. We only need to estimate the total exempted volume.

Moreover, prior to the 2020 final rule, EPA had not articulated its prospective policy to adjudicating SRE petitions for those compliance years. For instance, in the 2018 final rule, we did not state our policy to adjudicating 2018 SRE petitions. Instead, we articulated that policy in a separate memorandum issued after the annual rule.[190] Since EPA's policy to adjudicating SRE petitions affects the exempted volume, not having established this policy at the time of the annual rule made it very challenging to project the exempted volume. By contrast, in this action, we have the benefit of a stated policy for adjudicating SRE petitions. As we explain below, we have also actually adjudicated numerous SRE petitions for 2020 and 2021 based on this policy. These facts strongly augment our ability to reasonably project the exempted volume for 2020–2022.

Fourth, in the 2020 final rule, we indicated that the revised definitions resulted in reallocating a projection of significant exempted volumes for the purpose of better ensuring that the renewable fuel volumes were met. We

[180] 85 FR 7016 (February 6, 2020).

[181] See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[182] See 78 FR 49825–49826; 77 FR 1340; EPA's Br., Doc No. 1757157, D.C. Cir. No. 17–1258, *AFPM* v. *EPA* (Oct. 25, 2018) (''EPA Br. in *AFPM*'').

[183] *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 842–44 (1984).

[184] CAA section 211(o)(9)(B)(i).

[185] CAA section 211(o)(3)(B)(i); see also CAA section 211(o)(2)(A)(i), (2)(A)(iii)(I), CAA section 301(a). This projection, moreover, is hardly unique in the RFS program as Congress required numerous projections in the implementation of the program. *See, e.g.,* CAA section 211(o)(7)(D) (projection of the volume of cellulosic biofuel production); (o)(3)(A) (projection of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel).

[186] See CAA section 211(o)(2)(A)(i), (2)(A)(iii)(I), (3)(B)(i); see also CAA section 301(a).

[187] 77 FR 1340 (January 9, 2012).

[188] 77 FR 1340 (January 9, 2012).

[189] EPA Br. in *AFPM* 72–77.

[190] ''Decision on 2018 Small Refinery Exemption Petitions,'' Memorandum from Anne Idsal, Acting Assistant Administrator, Office of Air and Radiation to Sarah Dunham, Director, Office of Transportation and Air Quality. August 9, 2019. We note that this decision was subsequently remanded to EPA, and EPA issued a new decision on April 7, 2022. ''Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–005, April 2022.

noted that the projection of significant exempt volumes was consistent not only with our prospective SRE policy at the time but also with our then-recent experience administering the RFS program and the relatively high levels of volumes exempted after the promulgation of the relevant annual rules. These facts have since changed. As we explain below, we are projecting an exempt volume of zero gallons based on our new SRE policy. Thus, the projection has no impact on the calculation of the 2020–2022 percent standards. Stated differently, even were we to apply the prior formula definitions used in the 2019 and earlier final rules, we would establish the same percent standards.

Nonetheless, we are choosing to maintain the modified definitions for several reasons. First, as we explained above, we think the modified definitions properly harmonize the statutory directives to ''ensure'' that the volumes are met with the statutory authority to grant SREs ''at any time,'' including after the promulgation of the annual standards. Second, while we are not aware of any circumstances that would warrant EPA granting SREs given the technical findings in the recent SRE denials as explained further below, the statute nonetheless continues to provide authority to grant SREs. In the event EPA does grant SREs for some future compliance year, accounting for a projection of SREs would in fact better ''ensure'' that the volumes are met. Third, as we noted in the 2020 final rule, we received numerous comments on this issue as well as a petition for reconsideration. Based on this significant stakeholder input, we conducted a comprehensive legal, policy, and technical analysis of this issue and decided to modify the definitions in that final rule. While we chose to reexamine this issue and retain the authority to further revise the definitions, we are mindful of the importance of maintaining regulatory repose and certainty where appropriate. Finally, in this action, we also received many supportive comments on our approach. While we also received some adverse comments, those commenters largely rehashed arguments that we considered and rejected at the time of the 2020 final rule. In any event, no commenter presented us with a sufficient rationale for changing course once again. We further address these comments in Section 7 of the RTC document.

2. Projection of Exempt Volumes

We are finalizing a projected exempted volume of zero gallons for all years. This was the low end of the range that we proposed, consistent with the Tenth Circuit's decision in *RFA* v. *EPA.*[191] We are finalizing this projection based on our recent actions denying pending SRE petitions for 2016–2021, including all petitions for 2020 and 2021.[192] In these actions, we stated, consistent with *RFA,* that SREs should only be granted based on hardship due to RFS compliance, not other factors. We further found, consistent with our prior actions, that that no small refinery suffers hardship due to the RFS program because all small refineries are able to pass through the RIN costs of RFS compliance onto their customers in the form of higher sales prices on gasoline and diesel fuel. Accordingly, we denied the SRE petitions. This was also the primary rationale for the low end of the projection we set forth in the proposed rule. We intend to apply this same reasoning to future SRE petitions, and we are not aware of any circumstances at the current time that would warrant EPA granting SREs for the 2020, 2021, or 2022 compliance years. Therefore, we project that there will be no exempt volume from SREs under 40 CFR 80.1405(c) for 2020, 2021, and 2022.

The decision denying all existing 2020 and 2021 SRE petitions forms the primary basis for our 2020 and 2021 projections. While the regulatory language refers to the amount of gasoline and diesel fuel projected to be exempt (*i.e.,* the volume of exempt gasoline and diesel fuel as a result of SREs), in this action we are in the unique position of having adjudicated all 2020 SRE petitions and can use the actual exempt volume of gasoline and diesel fuel. As there has been no volume exempt thus far, and we do not anticipate granting any further exemptions, the best projection for use in the 2020 percentage standard formula is zero gallons of exempt gasoline and diesel fuel. For 2021, although we have only adjudicated five petitions, we intend to apply the same reasoning to any future petitions we received for 2021. Thus, we are also projecting zero gallons of exempt gasoline and diesel fuel for 2021. Finally, for 2022, although we have not adjudicated any SRE petitions for this year, nor do we have any petitions pending before us, we intend to apply the same reasoning to future petitions for 2022. Thus, we are also projecting zero gallons of exempt gasoline and diesel fuel for 2022. This approach was supported by many commenters.

EPA's projection of zero exempt volume is the Agency's best estimate based on the information available to us at this time. However, actual decisions on future petitions must await EPA's receipt and adjudication of those petitions. We are not in this action resolving any SRE petitions or prejudging the outcome of future petitions.

C. Modification of the 2020 BBD Percentage Standard

As noted above, the percentage standards implement the nationally applicable volume requirements. Since EPA is modifying 2020–2022 cellulosic biofuel, advanced biofuel, and total renewable fuel volumes in this action, we are also establishing percentage standards corresponding to those volumes. Further, we are establishing the 2022 BBD volume and associated percentage standard using our set authority as described in Section III.F. With regard to the 2020 and 2021 BBD volumes, EPA is not revising such volumes, which were established in the 2019 and 2020 final rules, respectively.[193] Nonetheless, for the 2021 BBD standard, EPA did not previously promulgate percentage standards, and thus we do so now for the first time.[194]

We are also revising the BBD percentage standard for the 2020 volume. EPA previously promulgated the 2020 BBD volume in the 2019 final rule and the associated percentage standards in the 2020 final rule.[195] In this action, EPA is modifying only the 2020 BBD percentage standard, not the 2020 BBD volume. Specifically, we are using the same volume requirement previously promulgated (2.43 billion gallons) but updating the other inputs for calculating the standard (such as the projections of gasoline and diesel fuel consumption and exempted gasoline and diesel fuel volumes in 2020), which

[191] We also proposed a high end of the range, consistent with the SRE policy set forth in the 2020 final rule. However, that policy is no longer EPA's policy. Nor did we apply that policy in actually adjudicating any SREs for 2020, 2021, or 2022. Thus, it cannot the basis for the projection.

[192] See ''April 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–005, April 2022; ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

[193] 83 FR 63704 (December 11, 2018); 85 FR 7016 (February 6, 2020). In this action, we are not reopening nor did we seek comment on the 2020 or 2021 BBD volume requirements.

[194] This action is consistent with past annual rules, which have generally promulgated the BBD percentage standard for the BBD volume set in the prior year's annual rule. This is due to the unique statutory timing applicable to BBD, where EPA must set the volume 14 months in advance but promulgate percentage standards by November 30 of the immediately preceding year. See CAA section 211(o)(2)(B)(ii), (o)(3)(B)(i).

[195] 85 FR 7049 (February 6, 2020).

we term ''inputs'' in the remainder of this section. The full list of inputs is set forth in Section V.D below.

We are updating the inputs because it is logical for all of the 2020 percentage standards to be calculated using the same inputs. This is consistent with EPA's policy since the beginning of the RFS program, where we have generally calculated all the percentage standards for a given year based on the same inputs. Here, because we are updating the inputs for the other 2020 percentage standards, we also are modifying the inputs for the 2020 BBD percentage standard. This approach is supported by the nested nature of the standards, where BBD is a subset of the advanced biofuel and total renewable fuel standards, and compliance with all three standards is accomplished in part by using the same RINs. We believe it would not be appropriate to use updated inputs for the other standards, while simultaneously using what is now outdated data for the BBD standard alone.

Additionally, the inputs we are using in this action are quite different from the inputs used in the 2020 final rule. As discussed in Sections II.D. and III.C., the projections for gasoline and diesel fuel consumption in 2020 final rule, which were used to establish the BBD standard, are significantly different than the actual gasoline and diesel fuel consumed in 2020. Relative to the 2020 final rule, we are also using different projections of exempted gasoline and diesel fuel, as discussed in the prior section.

Finally, we note that our modification of the 2020 BBD percentage standard is not anticipated to have any significant real-world impacts. The modification results in an increase in the BBD percentage standard, which will increase the number of RINs required for compliance with this standard. However, even were we to retain the original, lower standard, we would nonetheless expect the same number of BBD RINs to be used for 2020 compliance given that BBD is nested within the advanced biofuel category and additional BBD RINs will be used to comply with that standard.

D. Percentage Standards for 2020–2022

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables comprising the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and projected exempt volumes of gasoline and diesel fuel. The values of all the variables used for this rule are shown in Table V.D–1 for the applicable 2020, 2021, and 2022 standards (including the 2022 supplemental standard).[196]

TABLE V.D–1—VOLUMES FOR TERMS IN CALCULATION OF THE PERCENTAGE STANDARDS [a]

Term	Description	2020	2021	2022	2022 Supplemental
RFV_{CB}	Required volume of cellulosic biofuel	0.51	0.56	0.63	0
RFV_{BBD}	Required volume of biomass-based diesel [b]	2.43	2.43	2.76	0
RFV_{AB}	Required volume of advanced biofuel	4.63	5.05	5.63	0
RFV_{RF}	Required volume of renewable fuel	17.13	18.84	20.63	0.25
G	Projected volume of gasoline	123.11	134.50	138.61	138.61
D	Projected volume of diesel	49.96	49.92	56.15	56.15
RG	Projected volume of renewables in gasoline	12.64	13.96	14.31	14.31
RD	Projected volume of renewables in diesel	2.16	2.08	2.45	2.45
GS	Projected volume of gasoline for opt-in areas	0	0	0	0
RGS	Projected volume of renewables in gasoline for opt-in areas.	0	0	0	0
DS	Projected volume of diesel for opt-in areas	0	0	0	0
RDS	Projected volume of renewables in diesel for opt-in areas.	0	0	0	0
GE	Projected volume of gasoline for exempt small refineries.	0.00	0.00	0.00	0.00
DE	Projected volume of diesel for exempt small refineries	0.00	0.00	0.00	0.00

[a] Except where otherwise noted, the required volumes (*i.e.,* the first four rows of the table) are in billion RINs. All other volumes are in billion gallons (not billion RINs).

[b] The BBD volume used in the formula represents physical gallons. The formula contains a 1.5 multiplier to convert this physical volume to ethanol-equivalent volume.

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were derived from EIA's January 2022 STEO. While we received 2022 transportation fuel demand projections from a letter sent by EIA on October 29, 2021, which included gasoline and diesel fuel demand projections from the October 2021 STEO, we believe it is more appropriate to use demand projections from the more recent January 2022 STEO. Using more up-to-date EIA data on projected gasoline and diesel fuel demand allows our assessment of 2022 supply—and calculation of percentage standards—to be as accurate as possible. For the same reason, we have used updated, actual gasoline and diesel fuel consumption estimates for 2020 and 2021 from EIA's Monthly Energy Review (MER).[197]

Using the volumes shown in Table V.D–1, we have calculated the percentage standards for 2020, 2021, and 2022 as shown in Table V.D–2.

[196] See the technical memoranda, ''Calculation of % standards for 2020,'' ''Calculation of % standards for 2021,'' and ''Calculation of % standards for 2022,'' available in the docket for this action.

[197] To determine the 49-state values for gasoline and diesel, the amount of these fuels used in Alaska is subtracted from the totals provided by EIA because petroleum-based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 25, 2021 EIA State Energy Data System (SEDS), Energy Consumption Estimates. In addition, fuel used in ocean-going vessels is also subtracted from the total because it is excluded from the definition of transportation fuel by the statute. This volume is provided directly by EIA.

TABLE V.D–2—PERCENTAGE STANDARDS

Category	2020 (percent)	2021 (percent)	2022 (percent)
Cellulosic Biofuel	0.32	0.33	0.35
Biomass-Based Diesel	2.30	2.16	2.33
Advanced Biofuel	2.93	3.00	3.16
Renewable Fuel	10.82	11.19	11.59
Supplemental Standard	n/a	n/a	0.14

VI. Administrative Actions

A. Assessment of the Domestic Aggregate Compliance Approach

The RFS regulations specify an ''aggregate compliance'' approach for demonstrating that planted crops and crop residue from the U.S. comply with the ''renewable biomass'' requirements that address lands from which qualifying feedstocks may be harvested.[198] In the 2010 RFS2 rulemaking, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres is not exceeded, it is unlikely, based on our assessment of historical trends and economic considerations, that new land outside of the 2007 baseline is being devoted to crop production. The regulations specify, therefore, that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not undertake individual recordkeeping and reporting related to documenting that their feedstocks come from qualifying lands, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded.

The regulations promulgated in 2010 require EPA to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 382.6 million acres in 2021 and thus did not exceed the 2007 baseline acreage of 402 million acres.[199] [200]

B. Assessment of the Canadian Aggregate Compliance Approach

The RFS regulations specify a petition process through which EPA may approve the use of an aggregate compliance approach for planted crops and crop residue from foreign countries.[201] On September 29, 2011, EPA approved such a petition from the Government of Canada.[202]

The total agricultural land in Canada in 2021 is estimated at 115.8 million acres. This total agricultural land area includes 94.4 million acres of cropland and summer fallow, 11.6 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in EPA's response to Canada's petition. This acreage does not exceed the 2007 baseline acreage of 122.1 million acres.[203]

VII. Biointermediates

A. Background

In order for a fuel to be a renewable fuel under the RFS program, it must be produced from renewable biomass as defined in the statute (as well as be used to displace petroleum-based transportation fuel, heating oil, or jet fuel). The RFS regulations were designed with the assumption that renewable biomass would be converted into renewable fuel at a single facility where the connection between renewable biomass and renewable fuel would be obvious and easy to verify (*e.g.,* a renewable fuel producer purchases corn directly from several farmers in a region, crushes the corn in a mill, and then ferments the corn into ethanol, all at the same facility). The regulations therefore impose requirements on renewable fuel producers to provide EPA with information necessary to verify that their fuel was made with qualifying renewable biomass, through production processes corresponding with approved pathways, and in volumes corresponding to feedstocks used. Such information is necessary for oversight and enforcement, providing integrity and confidence in the program.

Since the RFS2 regulatory program was promulgated in 2010, however, EPA has received a number of inquiries from companies regarding the possible use of renewable biomass that has been substantially pre-processed at one facility to produce a proto-renewable fuel (referred to as a biointermediate), which would then subsequently be used at a different facility to produce renewable fuel for which RINs would be generated. For example, a number of companies have approached us with the proposed use of woody biomass or separated MSW to produce a biocrude, a pre-processed feedstock that could then be processed into renewable fuel at a crude oil refinery. In response to these requests, EPA has stated that the RFS regulations promulgated in 2010 are insufficient to generally allow RINs to

[198] 40 CFR 80.1454(g). EPA established the ''aggregate compliance'' approach in the 2010 RFS2 rule and has applied it for the U.S. in annual RFS rulemakings since then. See 75 FR 14701–04. In this final rule, we have not reexamined or reopened this policy, including the regulations at 40 CFR 80.1454(g) and 80.1457. Similarly, as further explained below, we have applied this approach for Canada since our approval of Canada's petition to use aggregate compliance in 2011. In this final rule, we have also not reexamined or reopened our decision on that petition. Any comments we received on these issues are beyond the scope of this rulemaking.

[199] For additional analysis and the underlying USDA data, see ''Assessment of Domestic Aggregate Compliance Approach 2021,'' available in the docket for this action.

[200] USDA also provided EPA with 2021 data from the discontinued Grassland Reserve Program (GRP) and Wetlands Reserve Program (WRP). Given this data, EPA estimated the total U.S. agricultural land both including and omitting the GRP and WRP acreage. In 2021, combined land under GRP and WRP totaled 2,993,177 acres. Subtracting the GRP and WRP acreage in addition to the Agriculture Conservation Easement Program acreage yields an estimate of 379.6 million total acres of U.S. agricultural land in 2021. Just subtracting the Agriculture Conservation Easement Program leads to an estimate of 382.6 million total acres of U.S. agricultural land in 2021.

[201] 40 CFR 80.1457.

[202] See ''EPA Decision on Canadian Aggregate Compliance Approach Petition'' (Docket Item No. EPA–HQ–OAR–2011–0199–0015).

[203] The data used to make this calculation can be found in ''Assessment of Canadian Aggregate Compliance Approach 2021'' located in the docket to this rule.

be generated in situations where multiple facilities are involved in the conversion of renewable biomass feedstocks into renewable fuel. The existing registration, engineering review, recordkeeping, reporting, and attest audit provisions extend only to the renewable fuel production facility under the assumption that the renewable biomass was a direct input to the facility. In the case of biointermediates, however, some steps of the fuel production process are not taking place at the renewable fuel production facility, rendering ineffective the existing oversight provisions to ensure production from renewable biomass under an EPA-approved pathway. The introduction of a biointermediate production facility without commensurate oversight provisions introduces the possibility of the same renewable biomass being claimed by multiple renewable fuel facilities, multiple RINs being generated on the same product, or RINs being generated inconsistent with an EPA-approved pathway. Additionally, without adequate oversight of the biointermediate production facility, it may be impossible to tell whether a so-called ''renewable fuel'' is in fact from renewable biomass as opposed to petroleum sources, as it is not always possible to detect a biointermediate in a finished fuel. Thus, in order to ensure that fuels produced using biointermediates comport with CAA requirements for renewable fuels, EPA is must extend its regulatory structure, including requirements for registration, engineering review recordkeeping, reporting, and attest audits, to biointermediate production, transfer, and use.

On November 16, 2016, EPA issued the proposed Renewables Enhancement and Growth Support (REGS) rule that, among other things, outlined proposed provisions to allow the use of biointermediates to produce qualifying renewable fuels under the RFS program.[204] The REGS proposal outlined a comprehensive set of compliance provisions, enforcement provisions, and oversight mechanisms for biointermediates that would have allowed biointermediates into the RFS program while maintaining oversight of the production, transfer, and use of biointermediates to make renewable fuels. A public hearing was held in Chicago, IL, on December 16, 2016, and the public comment period ended on January 17, 2017. However, EPA did not finalize the biointermediates provisions in the REGS proposal.

Since 2017, we have carefully considered public comments received in response to the proposed biointermediates provisions in the REGS proposal, as well as new information relevant to biointermediates that has become available as the industry continues to evolve. Based on those comments and our updated understanding of the renewable fuels landscape, we thought further on how best to design and implement a potential biointermediates program and decided to propose the biointermediates provisions anew.[205] While the December 2021 biointermediates proposal re-proposed many provisions of the REGS proposal, it also updated several key aspects of that proposal reflecting what we have learned since that time.

We re-proposed (*i.e.,* proposed anew) the biointermediates provisions for two main reasons. First, since the publication of the REGS proposal, we identified several areas that we wanted to modify or enhance based on new information and our updated understanding of how biointermediates may be used in the industry (based on, *e.g.,* the many new and different players as the market has continued to evolve). Second, we believed it would be useful to provide an additional opportunity for stakeholders interested in biointermediates to comment on the proposed program as a whole given the significant changes in the new proposal and to the amount of time that has passed since the REGS proposal.

In this action, we are finalizing provisions to allow for the use of biointermediates to produce qualifying renewable fuels. These provisions specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. These provisions center around the production, transfer, and use of biointermediates and the creation of new regulatory requirements related to registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production.

B. Effect of This Action on Biointermediates Provisions Proposed in the REGS Rule

The December 2021 re-proposal of the biointermediates program superseded the previously proposed biointermediates provisions in the REGS proposal. In the December 2021 notice, we explained that we were re-proposing (*i.e.,* proposing anew) some aspects of the biointermediates provisions from the REGS proposal without changes and updating other aspects.[206] The biointermediates provisions in the December 2021 proposal thus replaced the proposed biointermediate provisions in the REGS proposal and had the effect of withdrawing that previous proposal. That is, we are now clarifying that we consider the biointermediates provisions in the 2016 REGS proposal formally withdrawn. We are not withdrawing any other portion of the REGS proposal. As we noted in the December 2021 proposal, we are not responding to any comments on the biointermediates provisions in the REGS proposal that were not resubmitted as comments on the December 2021 proposal; comments on the REGS proposal that were not resubmitted are outside the scope of this action.[207]

C. Biointermediates Regulatory Provisions

We are finalizing provisions allowing the use of biointermediates because we believe that the use of biointermediates to produce renewable fuels will be a reasonable and positive development for future growth in production, particularly of cellulosic and advanced biofuels. At the same time, a robust set of regulatory provisions for the use of biointermediates is needed in order to ensure that renewable fuels produced from biointermediates meet the statutory requirements to be produced from renewable biomass and via processes that meet the necessary greenhouse gas reduction thresholds.[208] Additionally, we need to be able to oversee the validity of RINs generated in situations where feedstocks are allowed to be processed at multiple facilities, and where partially processed feedstocks, which may appear very similar to or have the potential to actually qualify as renewable fuels themselves, are transferred between parties. In many cases, biointermediates are processed to a point where they can be used directly as fuel or as a feedstock to produce a different renewable fuel with further processing. The fact that a biointermediate can be both a potential renewable fuel and a feedstock creates opportunities for the multiple-generation of RINs for the same volume. The biointermediates program imposes regulatory requirements designed to prevent such multiple counting. Similarly, we need to ensure that non-qualifying feedstocks are not added to

[204] See 81 FR 80828 (November 16, 2016).

[205] See 86 FR 72465–72474 (December 21, 2021).

[206] See 86 FR 72465 (December 21, 2021).

[207] See 86 FR 74266 (December 21, 2021).

[208] See CAA Section 211(o)(1).

biointermediates during transit and counted as qualifying for subsequent RIN generation. Finally, we must also ensure that renewable fuels produced from biointermediates are produced under EPA-approved pathways to ensure that applicable GHG threshold reductions are met. As the history of the RFS program has demonstrated, the value of RINs provides considerable incentive for fraudulent activity, and therefore it is important for the integrity of the program that mechanisms be in place to verify their validity.[209]

The finalized biointermediate provisions are designed to ensure that biointermediates are produced, transferred, and used in a manner consistent with Clean Air Act and EPA regulatory requirements. The registration, reporting, and recordkeeping requirements for biointermediate producers discussed in Section VII.C.7 will demonstrate that a biointermediate producer can make qualifying biointermediate under an approved pathway, and the biointermediate-related modifications to the renewable fuel producer's registration, reporting, and recordkeeping requirements will help ensure that biointermediates are used consistent with approved pathways to make qualifying renewable fuel. The transfer limits discussed in Section VII.C.4 coupled with the product transfer document requirements discussed in Section VII.C.6 will allow the effective tracking of biointermediates from the point the biointermediate is produced to the point the biointermediate is used to help ensure that biointermediates are not contaminated or multiple-counted for RIN generation during transport.

We are also finalizing independent third-party oversight measures to allow verification that biointermediates are produced, transferred, and used appropriately. As discussed in Section VII.C.5, biointermediate producers and renewable fuels must participate in the RFS Quality Assurance Program (QAP), which will verify production of both the biointermediate and resultant renewable fuels. As discussed in Section VII.C.8, biointermediate producers and renewable fuel producers will also have to undergo an annual attest engagement audit, which verifies that registration, reporting, and recordkeeping information is consistent with EPA's regulatory requirements for biointermediate production, transfer, and use.

As discussed in Section VII.C.9, we are also finalizing provisions that address situations where a biointermediate is improperly produced. These provisions establish which parties are liable when an improperly produced biointermediate is identified and how any RINs generated from fuel produced from the improperly produced biointermediate will be treated. We believe these provisions will provide strong incentives for biointermediate producers and renewable fuel producers to produce, transfer, and use biointermediates in a manner consistent with Clean Air Act and EPA regulatory requirements.

1. General Biointermediates Program Structure

We are finalizing the general program structure as proposed with modifications based on comments. Under today's biointermediates program, approved pathways in Table 1 to 40 CFR 80.1426 (hereafter ''Table 1'') will continue to identify the renewable biomass feedstocks and processes that are acceptable to make renewable fuel for the respective pathways; however, with the finalization of the biointermediates program, the processes specified can now be conducted across two different facilities.[210] Since biointermediates are altered from the feedstocks listed in Table 1, the regulations require renewable fuel producers to have sufficient information from the biointermediate producer to verify that the biointermediate is made from the renewable biomass feedstock listed in the approved pathway being used by the renewable fuel producer.[211] Similarly, the biointermediate producer must have sufficient documentation from the feedstock supplier(s) to demonstrate that the feedstock used to produce the biointermediate was renewable biomass. The regulations further require the renewable fuel producer to keep records and report to EPA information sufficient to verify that the biointermediate used to produce the renewable fuel is produced from renewable biomass consistent with the EPA-approved pathway. The biointermediate producer must also independently keep records and report to EPA information to demonstrate that biointermediates were produced from qualifying renewable biomass feedstocks under EPA-approved pathways.[212]

We are not changing the current system in which, with very few exceptions (*i.e.,* RINs generated for biogas to renewable CNG, renewable LNG, or renewable electricity), only the renewable fuel producer is permitted to generate RINs. This means that the party that produces renewable fuel from a biointermediate generates RINs, rather than the producer of the biointermediate. This approach is the easiest to both implement and enforce, and will involve no disruption from current practices. If we were to allow for different points of RIN generation, it would add unnecessary complexity and difficulty into the program, and introduce an opportunity for fraudulent multiple-generation of RINs for the same volume of fuel. While renewable fuel producers are not precluded from entering into contracts with biointermediate producers that could provide for transfer of some or all of the RIN value to the biointermediate producer, under the biointermediates provisions only the renewable fuel producer will be able to generate and assign the RIN within the EPA Moderated Transaction System (EMTS).

We discuss specific provisions related to the biointermediate provisions being finalized in this document below. In general, we received many public comments that were supportive of our general approach to allow to produce renewable fuels using biointermediates. We summarize and respond to all comments received relating to biointermediates in Section 10 of the RTC document.

2. Implementation Dates

We are finalizing our proposal that the biointermediates provisions will be implemented starting 60 days after the publication of the final rule in the **Federal Register**. Recognizing the amount of time that has passed since EPA first identified the need to revise the regulations in order to allow the use of biointermediates and stakeholders' continued interest in such use, we are beginning program implementation as soon as possible. As explained at proposal, the start date of the program is necessarily linked to the scope and complexity of the biointermediates

[209] We note that there has been a long history of RIN fraud in the RFS program. We detail several of the major RIN fraud civil enforcement cases on our website, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.*

[210] We discuss lifecycle and pathway considerations for the use of biointermediates in Section VII.D.2. This section also addresses the interplay between the biointermediates program and facility-specific pathways under 40 CFR 80.1416.

[211] We discuss the product transfer document requirements for biointermediates in Section VII.C.6.

[212] We discuss the registration, reporting, and recordkeeping requirements for biointermediate producers and renewable fuel producers in Section VII.C.7.

provisions being finalized.[213] In general, public comments supported our proposal to begin implementing the biointermediate provisions as soon as possible. We also received a number of public comments suggesting a multitude of changes, many of which would have significantly increased the scope and/or complexity of the biointermediates program and thus the amount of time EPA would need to begin implementing it. While we address these suggestions individually in this preamble or the RTC document, we note that we have finalized a program that we can implement quickly and effectively so that parties can begin producing biointermediates as soon as practical.

3. Definition of Biointermediate

a. General Approach to Defining Biointermediates

We are finalizing as proposed our general approach to defining biointermediates that are allowed in the program.[214] We explained in the December 2021 proposal that the broad definition of biointermediate in the REGS proposal would have allowed any product that met that definition to be used as a biointermediate. We also noted that, based on comments received on the REGS proposal and subsequent information and experience, the one-size-fits-all regulatory framework in the REGS proposal would not actually work in all of the potential biointermediates situations anticipated. Therefore, in December 2021 we instead proposed to specifically identify permissible biointermediates by adding individual types to the definition of biointermediates. By allowing only those particular types of biointermediates for which we have adequate information and confidence in our ability to effectively oversee their production, distribution, and use, we can ensure that RINs are generated only for fuels produced from biointermediates that in turn are produced from renewable biomass under EPA-approved pathways. We also noted at proposal that, under this approach, in order for us to allow a new biointermediate into the program we would need to modify the regulatory definition of biointermediates via rulemaking. Recognizing that undergoing a rulemaking to add new biointermediates into the program could take time, we sought comment on whether we should allow for an administrative process to approve biointermediates outside of a rulemaking.

Several commenters suggested that we either revert to the proposed biointermediates definition in the REGS proposal or allow for an administrative process akin to the pathway petition process for the approval of new biointermediates.[215] These commenters suggested that a rulemaking process would take too long to allow for EPA to approve new biointermediates. They also noted that they believed that the proposed regulatory provisions provided sufficient safeguards to allow a broader range of biointermediates than the proposed definition would allow. Other commenters supported our general approach to defining biointermediates. These commenters noted that the approach balanced the allowing of needed flexibility in the RFS program to allow for renewable fuels to be produced at multiple facilities with ensuring proper oversight of a more complex production and distribution chain.

While we appreciate the desire of the commenters for greater flexibility and responsiveness, their comments did not assuage our implementation and oversight concerns. Each biointermediate has particular compliance and enforcement considerations, including how to track the biointermediate back to renewable biomass, how a biointermediate may be processed with other feedstocks to produce renewable fuel, and how a biointermediate fits within existing pathways. Furthermore, commenters failed to specify how the proposed biointermediate provisions could address our implementation and oversight concerns for any and all future potential biointermediates. While we have sufficient information on and understanding of the specific biointermediates that we proposed for inclusion in the December 2021 proposal and those additional biointermediates that we are finalizing as discussed in Section VII.C.3.c, it is difficult to anticipate whether the biointermediates program will be effective for biointermediates with as-yet unknown production, distribution, and use considerations. As such, we continue to believe that the most reasonable approach is a biointermediates program that allows us to consider and, if necessary, address these challenges on a biointermediate-by-biointermediate basis. We are thus finalizing as proposed our proposal to define the scope of the program by specifying the particular biointermediates that will be eligible to produce qualifying renewable fuels. In other words, under this approach, we are defining the specific situations in which it would be permitted to process feedstocks into renewable fuels at multiple facilities. Also under this approach, if we do not list a ''biointermediate'' explicitly in the definition of biointermediate, that purported ''biointermediate'' is not lawful for use in making renewable fuels under the RFS program. In order for a new biointermediate to be brought into the program under this approach, we will amend the regulations via notice-and-comment rulemaking to add the new biointermediate to the list, at which time we will also make any other necessary regulatory changes needed to provide proper oversight for its potentially unique circumstances.

We appreciate commenters concerned that adding new biointermediates via notice-and-comment rulemaking will take time; however, we note that we will likely continue to periodically issue rulemakings related to the RFS program to set volume requirements, promulgate new pathways, and technically amend the RFS regulatory provisions. These ongoing regulatory activities will provide ample opportunities to add new biointermediates to the program with any other necessary regulatory changes on a regular basis.

As explained at proposal, our approach to defining biointermediates is not intended to affect pre-processing steps for feedstocks in Table 1 that are limited to form changes. We recognize that it has been common practice for some feedstocks listed in Table 1 to 40 CFR 80.1426 to be pre-processed at separate facilities before they are delivered to a renewable fuel production facility and used to produce renewable fuel. We do not intend to disrupt this practice. However, in order to assure that we can verify that renewable fuel was made with qualifying renewable biomass, through production processes corresponding with approved pathways, we need to impose limits on the type of pre-processing of qualifying feedstocks that will be allowed without becoming subject to the biointermediate requirements. We believe we have appropriately balanced these interests by allowing the pre-processing of feedstocks listed in approved pathways at facilities other than the renewable fuel production facility, but only if the pre-processing results only in a form change such as chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging,

[213] See 86 FR 72466 (December 21, 2021).

[214] We are finalizing the definition of biointermediate in 40 CFR 80.1401.

[215] The pathway petition process is described in 40 CFR 80.1416.

degumming, dewatering/drying, melting, or the addition of water to produce a slurry. Unlike other processes that would lead to a biointermediate, even though these form-change processes are conducted at an upstream location, the feedstock can reasonably be expected to continue to be derived from renewable biomass, be used to produce renewable fuel under an EPA-approved pathway, and EPA can be reasonably expected to be able to verify it.

In the NPRM, we sought comment on whether we should expand or narrow the types of pre-processing that should be allowed for feedstocks at facilities other than the renewable fuel production facilities that will not result in a biointermediate. Several commenters noted that we should allow for additional types of pre-processing steps. Based on these comments, we are adding the bleaching and degumming of vegetable oils as non-prohibited pre-processing steps. These pre-processing steps are consistent with our stated intent in the proposal to avoid disrupting existing renewable fuel production processes where renewable biomass is not substantially altered in a manner that would make us question our ability to oversee the program. We have not included pre-processing steps that raise concerns over our ability to ensure that a biointermediate was produced from renewable biomass. Allowing such processes would require additional regulatory oversight, such as the biointermediate provisions being finalized in this document.

To implement this approach, we are finalizing a prohibition on the production of a renewable fuel at more than one facility unless the renewable fuel production facility is using a biointermediate as defined in 40 CFR 80.1401 or is using feedstocks identified in Table 1 to 40 CFR 80.1426 that were pre-processed at a different facility and the pre-processing was limited to chopping, crushing, grinding, pelletizing, filtering, compacting, compression, centrifuging, degumming, dewatering/drying, melting, or the addition of water to produce a slurry. Our intent with this prohibition is to make clear the specific situations where feedstocks will be allowed to be processed at multiple facilities without being subject to the biointermediates provisions.

b. Biocrude, Free Fatty Acid (FFA) Feedstock, and Undenatured Ethanol

In the NPRM, we proposed an initial list of biointermediates that included biocrude, FFA feedstock, and undenatured ethanol. We proposed these three biointermediates because we believed they could effectively be accommodated by the proposed biointermediates provisions. We noted that these biointermediates are likely to be available in measurable quantities in the near future and that our proposed biointermediate regulations could ensure proper compliance oversight and enforcement.[216] We also noted that since parties exist that are relatively close to or already capable of producing renewable fuels from biocrude, FFA feedstock, and undenatured ethanol, it is relatively clear to us how they will do so and what the compliance oversight issues might be with these biointermediates. Because we had sufficient knowledge and understanding to be confident that our biointermediates regulations can ensure proper compliance and oversight, proposed that it would be appropriate to allow the use of these biointermediates to produce renewable fuel under a biointermediates program.

All commenters that spoke to the issue of inclusion of biocrude, FFA feedstock, and undenatured ethanol supported the inclusion of these biointermediates into the program. As supported by commenters, we are finalizing the inclusion of biocrude, FFA feedstock, and undenatured ethanol.[217]

To effectuate the inclusion of these biointermediates in the definition of the program, we proposed specific definitions of biocrude, FFA feedstock, and undenatured ethanol. We developed these proposed definitions based on discussions we had with parties that were interested in producing these biointermediates prior to the December 2021 proposal. We received several comments suggesting clarifications for each proposed definition.

Regarding biocrude, in the NPRM we proposed to define biocrude as ''a liquid biointermediate produced from renewable biomass through gasification or pyrolysis at a biointermediate production facility to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.'' [218] We proposed to limit biocrude to these two production processes because we believed that gasification or pyrolysis of qualifying renewable biomass to make biocrude was consistent with the existing EPA-approved pathways, specifically Row M of Table 1 to 40 CFR 80.1426. We received a number of comments suggesting that we allow for additional processes for the production of biocrude. Some commenters noted that additional processes are already covered by current pathways listed in Table 1 of 80.1426 (*e.g.,* thermo-catalytic hydrodeoxygenation listed in Row M). Others asked whether certain types of pyrolysis (*e.g.,* hydrothermal liquefaction) would be covered under the proposed definition. Finally, some commenters noted that there are a number of potential processing technologies to produce biocrude that EPA should consider adding to the proposed biocrude definition. We appreciate commenters highlighting that biointermediate producers could use other processes to make biointermediates consistent with our proposed approach. Therefore, we have modified the definition of biocrude to clarify that it must be produced from a process already covered under pathway M under Table 1 of 80.1426 (*e.g.,* pyrolysis or gasification), or a process identified in an approved pathway under 40 CFR 80.1416 for the production of renewable fuel produced from biocrude.

Due to the significant amount of energy needed to process renewable biomass, it is important that only processes we have determined are consistent with meeting the applicable GHG reduction thresholds are used to produce biocrude. We are therefore structuring the biocrude definition to clearly limit biocrude production to processes covered by an EPA-approved pathway that can account for the GHG reduction, while reducing barriers for processes that can demonstrate they meet the GHG reduction.

We also received several comments on the proposed FFA feedstock definition, and we are finalizing some suggested changes to that definition based on comments. In the NPRM, we proposed to define FFA feedstock as ''a biointermediate that is composed of at least 80 percent free fatty acids that are separated from renewable biomass.'' [219] We also proposed to include a provision that FFA feedstock must not include any free fatty acids from the refining of crude palm oil. We explained that this proposed definition is consistent with the lifecycle analysis that supported the proposed stand-alone esterification pathway in the 2020 RVO rule,[220] and that it would ensure that only those FFA

[216] See 86 FR 72466–72469 (December 21, 2021).

[217] The definitions of each of specific biointermediate allowed under the program are being promulgated at 40 CFR 80.1401.

[218] See 86 FR 72475 (December 21, 2021).

[219] See 86 FR 72485 (December 21, 2021).

[220] See 84 FR 36801 (July 29, 2019) for the proposed esterification pathway and 86 FR 72473–72474 (December 21, 2021) for a discussion of FFA feedstocks and the proposed esterification pathway.

feedstocks that would fall under currently approved pathways would be used to produce renewable fuels.

We are finalizing changes to the FFA feedstock definition in two areas based on suggestions from public commenters. First, several commenters suggested that the 80 percent requirement was too restrictive and may limit the use of many FFA feedstocks that could currently be produced and used in the market. These commenters suggested that we reduce the limit to 50 or 60 percent. As explained in the RTC document, we believe these comments have merit and are therefore finalizing that FFA feedstock must contain at least 50 percent free fatty acids.

Second, one commenter suggested that we specify a test method to measure FFA concentration in FFA feedstock as part of the definition. While we generally agree with the idea of a biointermediate producer specifying how they intend to measure FFA concentration, we want to ensure that we are accommodating the number of test methods that could be used to measure FFA concentration. Therefore, in response to this suggestion, we are finalizing a requirement for biointermediate producers that make FFA feedstock to submit as part of registration a description of the method they will use to determine FFA concentration in FFA feedstock. In acting on registrations, EPA will either approve use of the proposed measurement method or require an alternate method.

Regarding undenatured ethanol, we proposed to define the specific biointermediate as ''ethanol that has not been denatured as required in 27 CFR parts 19 through 21.'' We received a comment suggesting that we expand the definition of undenatured ethanol to include specially denatured alcohols under the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) requirements at 27 CFR parts 20 and 21. Specially denatured alcohols (SDAs) are alcohols that are denatured to make them unfit for human consumption, but not in a manner that qualifies them as denatured fuel ethanol under EPA's fuel quality regulations at 40 CFR part 1090 or industry specifications at ASTM International (ASTM) D4806. The commenter suggested that these alcohols could be used to make renewable fuel and that TTB requires specific tracking of SDAs to ensure that they are not used for human consumption. We believe, as commenters suggest, that SDAs should qualify as a biointermediate. We recognize that parties that may wish to produce ethanol for use as a biointermediate must comport with TTB requirements for the distribution of the ethanol to renewable fuel production facilities, and those parties may wish to utilize the provisions of 27 CFR parts 20 and 21 to create SDAs instead of either obtaining waivers to TTB requirements to distribute undenatured ethanol or denaturing the ethanol to create denatured fuel ethanol (which can render the ethanol no longer suitable for use to produce a renewable fuel). We did not intend to exclude SDAs from the program and have expanded the definition of undenatured ethanol to include SDAs as suggested. However, as we discuss in more detail in the RTC document, TTB requirements are not a substitute for the biointermediates provisions as TTB's provisions are not intended to demonstrate that renewable fuels were produced consistent with CAA and EPA regulatory requirements.

We also note that we received a number of comments asking to clarify the treatment of foreign produced undenatured ethanol. We discuss this issue in Section VII.C.9.

c. Additional Allowed Biointermediates

Recognizing that there may be additional potential biointermediates that are consistent with our criteria for inclusion in the program at this time (*i.e.,* in this rulemaking), we sought comment on other potential biointermediates for inclusion in the final rule. In the NPRM, we noted that we would consider adding a potential biointermediate in the final rulemaking if its production, transfer, and use to produce renewable fuel would be sufficiently and appropriately covered by the regulatory framework we were proposing. Specifically, we noted our intention to base our consideration of potential additional biointermediates on whether the proposed biointermediates provisions would adequately limit opportunities to generate fraudulent RINs through multiple-counting, whether we could ascertain that feedstocks used to produce the potential biointermediate qualify as renewable biomass using an EPA-approved pathway, and whether there are any unique considerations for the potential biointermediate that would require further regulatory requirements to ensure that generated RINs are valid. We asked that commenters suggesting a potential additional biointermediate specifically address these criteria in their comments. We also asked commenters to provide information describing the type of potential biointermediate, the potential volume of renewable fuel(s) that could be produced from it, and the timeline for its development and ultimate production. Finally, we noted that we intended to finalize only those potential biointermediates that meet the criteria described above: would be effectively overseen under the proposed compliance and oversight provisions, have a low likelihood of being susceptible to generation of fraudulent RINs, can be verified as being produced from renewable biomass, and would not require further regulatory provisions.

We received comments suggesting several additional biointermediates for inclusion in the final rule. We note that many commenters did not supply adequate information for us to determine whether it would be appropriate, based on our criteria, to include a potential biointermediate in the program. In such cases, given our uncertainty regarding whether the regulatory provisions would be sufficient to oversee production and use of the biointermediate, we have not added the potential biointermediate to the list at this time. We discuss each of these potential biointermediates specifically in the RTC document.

However, some commenters did provide enough information for us to determine that we can appropriately include the potential biointermediate under the biointermediates provisions. In these cases, commenters adequately described the potential biointermediate and described how the proposed biointermediate provisions would be sufficient to mitigate the generation of fraudulent RINs. Based on the suggestions and descriptions from comments, we are finalizing the addition of five additional biointermediates in the final rulemaking. Specifically, we are adding the following to the biointermediates definition in this action: biomass-based sugars, digestate, glycerin, biodiesel distillate bottoms, and soapstock. We are also promulgating definitions, largely based commenters suggestions, for each of these specific biointermediates.[221] We note that EPA identified all of these biointermediates in the proposal as potentials for inclusion,[222] and we discuss these biointermediates and associated comments in the RTC document.

We received many comments on one particular potential biointermediate: biogas. Commenters suggested that we

[221] The definitions for biomass-based sugars, digestate, glycerin, biodiesel distillate bottoms, and soapstock will be included with other definitions specified in 40 CFR 80.1401.

[222] See ''Potential Biointermediates Memo'' located in the docket for this action, docket ID EPA–HQ–OAR–2021–0324–0271.

should allow biogas transported via commercial pipeline, sometimes called renewable natural gas or RNG, to be used as a biointermediate in the production of renewable hydrogen, renewable methanol, and a variety of other renewable fuels. Commenters also noted that many of the proposed biointermediate provisions would likely need to be revised in order for biogas to be used as a biointermediate. We are not adding biogas to the definition of biointermediate in this action. While we acknowledge the opportunities for additional advanced and cellulosic biofuels that allowing the use of biogas or RNG as a biointermediate would provide, we also note, as some commenters highlighted, that the biointermediate provisions currently being finalized are not appropriate for biogas used as a biointermediate, especially when that biogas or RNG is distributed via commercial pipeline. We neither developed nor proposed provisions that would be necessary to address the unique circumstances associated with biogas as a biointermediate. We intend to address the use of biogas as a biointermediate when we address issues related to the use of biogas to make renewable electricity (so-called ''eRINs'') in a future action.

4. Limits on Biointermediate Transfers

We are finalizing as proposed the requirement that the processing of a biointermediate must only occur at a single facility before the biointermediate is transported to a renewable fuel production facility.[223] Under this approach, only two parties would be involved in the transformation of a renewable biomass feedstock under an approved pathway into renewable fuel. While it is possible that in the future the production of certain biointermediates may require processing at multiple facilities, most if not all of the inquiries regarding biointermediates that we have received thus far have only involved two facilities: one to produce the biointermediate and another to turn it into renewable fuel. Additionally, while it is relatively straightforward for EPA to track biointermediates and enforce the applicable requirements when there is one biointermediate producer, significant implementation and enforcement concerns arise when more than one facility is involved in the production of a given biointermediate, as each extra production step adds another layer of complexity and potential for fraud to occur. Thus, the final regulations do not allow the production of biointermediates to occur at multiple facilities.

We are also finalizing as proposed the limit restricting the transfer of biointermediates from a biointermediate production facility to a single renewable fuel production facility, while renewable fuel production facilities may receive biointermediates from multiple biointermediate production facilities.[224] This limitation will significantly simplify tracking of biointermediates and therefore enable EPA to oversee RIN generation for renewable fuels produced from biointermediates. While many commenters asserted that the proposed limit would make biointermediate transfer and use more difficult, without this restriction on biointermediates transfers the use of non-qualifying feedstocks would be difficult to detect and therefore likely to occur. Additionally, we do not believe this limitation will unreasonably limit the production and use of biointermediates. In order for EPA and independent third parties to effectively audit whether qualifying biointermediates (*i.e.,* biointermediates produced from qualifying renewable biomass under an EPA-approved pathway) in the exact amounts (*i.e.,* the biointermediate did not have a RIN generated for it as a renewable fuel or have non-qualifying feedstocks added to the biointermediate during transport) were used in producing renewable fuel, all facilities that produced and used biointermediates as well as all the locations where biointermediates were distributed and stored need to be systematically audited. If there were no limits on biointermediates transfers, this could be potentially hundreds of facilities and locations located throughout the world. Such oversight would be unrealistic for EPA or independent third parties to accomplish, which would leave open opportunities for the generation of invalid or fraudulent RINs and undermine the use of real renewable fuels. If we were to allow biointermediate production facilities to transfer product to multiple renewable fuel production facilities and renewable fuel production facilities to also receive product from multiple biointermediate producers, some parties could take advantage of the increased complexity in tracking relationships and batches to use non-qualifying feedstocks to make renewable fuel or generate fraudulent RINs through multiple layers of multiple-counting.

We also note that allowing a many-to-many relationship would require both a significant investment in EPA tracking capability and a significant overhaul of the RFS quality assurance program (QAP). Both of these efforts would significantly delay the implementation of a biointermediates program. As such, we have finalized the biointermediates transfer limits as a means of quickly implementing the program while balancing our ability to ensure proper oversight. We may reconsider the limits on biointermediate transfers in the future as we gain more experience with biointermediates.

Relatedly, we are also finalizing as proposed registration provisions that require the biointermediate producer to designate as part of their registration information submitted to EPA the receiving renewable fuel production facility to which biointermediate will be transferred. Recognizing that biointermediate producers may need to periodically change the receiving renewable fuel production facility, we are allowing biointermediate producers to change their designated renewable fuel production facility no more than one time per calendar year unless, in its sole discretion, EPA determines it is appropriate to allow the biointermediate producer to change its designated renewable fuel production facility more than once in a year. An example of a situation where EPA would consider it appropriate is the closure of the receiving renewable fuel production facility. This once-a-year limitation is necessary to implement the many-to-one transfer limitation. Without such a limitation, biointermediate producers could redesignate their associated renewable fuel production facility an unlimited number of times which would undermine the purpose of the many-to-one limit (*i.e.,* establishing a set of provisions that allows us to maintain oversight).

We do not believe this registration requirement imposes an undue practical burden on transfers of biointermediates. We note that under the biointermediates program being finalized in this action, the newly designated receiving renewable fuel production facility must be registered to use the biointermediate, which in turn requires an engineering review by a professional engineer (PE) to determine that the renewable fuel

[223] The regulatory requirements pertaining to limits on biointermediate transfers are being promulgated at 40 CFR 80.1476(g).

[224] Informally, this type of relationship is called a ''many-to-one'' relationship. Under this approach, many biointermediate production facilities can only transfer biointermediates to a single renewable fuel production facility. In contrast, under a ''many-to-many'' relationship biointermediate production facilities could transfer biointermediates to many renewable fuel production facilities, and renewable fuel production facilities could receive biointermediates from many biointermediate production facilities.

production facility can use the biointermediate under an approved pathway. This process can take several months to arrange for a PE to conduct the engineering review, submit the registration update to EPA, and have it ultimately accepted by EPA. Also, as discussed in Section VII.C.5, both the biointermediate and renewable fuel producers must have their respective facilities audited under the QAP program, which also contributes to the amount of time needed to change the designated receiving renewable fuel production facility. Consequently, because of the time to conduct new engineering reviews and have new QAPs approved by EPA, limiting biointermediate producers to changing the designated receiving renewable fuel producer once per calendar year does not in fact impose any additional restriction.

These biointermediate transfer provisions will both enable the production and use of biointermediates and enhance our ability to provide compliance and enforcement oversight. Based on our discussions with parties interested in the production and use of biointermediates, we believe that in most cases parties intend for a single renewable fuel production facility to receive all biointermediate produced from a biointermediate production facility. The biointermediates transfer provisions are also designed to be consistent with our understanding of how biointermediate transfers would be contracted by biointermediate and renewable fuel productions and how renewable fuel production facilities would be designed to accommodate the use of biointermediates. We intend to review the limits on biointermediate transfers in the future as we gain more experience with the biointermediates program.

5. RFS Quality Assurance Program (QAP) and Biointermediates

We are finalizing revisions to the RFS QAP to expand coverage to biointermediate production and use as proposed.[225] The existing RFS QAP provides for auditing of renewable fuel production facilities by independent third-party auditors who review feedstock elements, process elements, and RIN generation elements to determine if renewable fuel production is consistent with EPA requirements. These independent third-party auditors verify the RINs generated from renewable fuel production facilities that participate in QAP. Under this action, we are finalizing our proposed requirement for both biointermediate producers and renewable fuel producers that use biointermediates to participate in the RFS QAP program. Independent third-party auditors will review feedstock and process elements for biointermediate production facilities to verify, among other things, that biointermediates are produced using renewable biomass and via processes consistent with the applicable renewable fuel pathway(s). Mandatory participation of both the biointermediate and renewable fuel producers will help ensure that RINs generated from biointermediates are valid, which in turn will allow EPA to balance the competing priorities of allowing the timely use of biointermediates for the production of renewable fuel in the near term and establishing a program that we can effectively oversee for the long term.

Additionally, in order for a renewable fuel producer to generate a Q–RIN, we are finalizing a requirement that both the biointermediate producer and the renewable fuel producer must have in place an EPA-approved pathway-specific QAP. This is necessary to provide the level of assurance that is expected from the RFS QAP. If we allowed the renewable fuel producer to generate Q–RINs without the biointermediate producer's information being verified, it could undermine the level of compliance assurance provided by Q–RINs. Furthermore, allowing the production and use of biointermediates to go unverified would provide increased opportunity for the use of unapproved feedstocks and the generation of fraudulent RINs through multiple-counting. Having an independent third-party auditor verify the production of both the biointermediate and the renewable fuel is necessary to help oversee the added complexity that results from having renewable fuel processing occur at two different facilities. Finally, since the focus of the QAP system is the validity of RINs and both the biointermediate producer and the renewable fuel producer must follow approved pathway processes for RINs to be valid, it would not be appropriate to allow the generation of Q–RINs without a QAP for the biointermediate producer.

Further, we are finalizing a requirement that the biointermediate producer and renewable fuel producer must use the same QAP vendor to ensure consistent oversight of the two facilities. We believe that the same auditor should verify both the biointermediate and renewable fuel production facility to ensure that the corresponding records, product transfer documents, and reported information agree between the two facilities. If we allowed separate auditors to verify the biointermediate and renewable fuel production facilities, the auditors may not be able to effectively implement their QAP and track biointermediate production, distribution, and use. We note that we are finalizing regulatory text that makes it clear our intent to require that the same independent auditor verify both the biointermediate producer and renewable fuel producer which was missing from the proposed regulations in the NPRM.[226]

6. Product Transfer Documents (PTDs)

We are finalizing, with modifications relative to proposal, PTD requirements for the transfer of custody and title of biointermediates from the biointermediate production facility to the renewable fuel production facility.[227] [228] PTD requirements are needed to provide renewable fuel producers using biointermediates the information they need to ensure the validity of RINs they generate. Under the biointermediates requirements being finalized in this action, the biointermediate producer must transfer to the renewable fuel producer PTDs for each batch of biointermediate. Since renewable fuel producers must have information about the feedstocks and processes used to produce biointermediates in order to ensure that they are generating valid RINs, the biointermediate PTD regulations require parties to transfer more information than is included in typical PTD requirements in the fuels regulations. The PTD must contain information

[225] The RFS QAP provisions are located throughout 40 CFR part 80, subpart M. In this action, we are modifying the regulatory RFS QAP regulatory provisions at 40 CFR 80.1469, 80.1471, and 80.1471 as well as creating a new section at 40 CFR 80.1477 that describes the verification of biointermediates specifically.

[226] See 86 FR 72470 (December 21, 2021) (''Further, we are proposing that the biointermediate producer and renewable fuel producer must use the same QAP vendor to ensure consistent oversight of the two facilities.'').

[227] PTD requirements for biointermediates, renewable fuels, and RINs under the RFS program are described at 40 CFR 80.1453.

[228] A transfer of title for a biointermediate is when one party (the transferer) transfers ownership of a batch or a portion of a batch of biointermediate to another party (the transferee). A transfer of custody for a biointermediate is when the transferer transfers physical custody of the batch or portion of a batch to the transferee without transferring ownership of the biointermediate. Such transfers of custody are common in the distribution of feedstocks, blendstocks, and fuels whereby those products are distributed via pipelines, railcars, and trucks operated by parties that never take title to the product being transferred. We anticipate that the distribution of biointermediates will be the same as other products covered by EPA's fuel quality and RFS programs.

related to the feedstock, volume, and processes used in the production of the biointermediate. Additionally, to the extent that any portion of the biointermediate is not derived from renewable biomass, biointermediate producers are required to identify the renewable content (expressed by weight or volume percent as appropriate) of the biointermediate that can be used to make renewable fuel for which RINs could be generated. If applicable, biointermediate producers must also convey information regarding the cellulosic content (by weight or volume percent as appropriate) of the biointermediate. Information on these breakdowns, if applicable, must be transferred via the PTD to the renewable fuel producer so it can properly generate RINs for renewable fuel produced from the biointermediate. In all situations where a renewable fuel producer is required to utilize information related to the production of a biointermediate under 40 CFR 80.1426(f) to generate RINs, the biointermediate producer must transfer with PTDs records describing applicable calculations to the renewable fuel producer. For example, a biointermediate producer must transfer records that include all of the inputs and assumptions required to calculate the feedstock energy according to equations in 40 CFR 80.1426(f)(3)–(4), including the mass of the feedstock or biointermediate (M), average moisture content of the feedstock or biointermediate (m), converted fraction (CF), and the energy content of the feedstock or biointermediate components converted into renewable fuel (E). Copies of these records must be transferred on each occasion when any party transfers title of a biointermediate.

Several commenters noted that including PTD requirements for transfers of custody and title for biointermediate transfers would be a departure from similar PTD requirements for renewable fuels, which only require PTDs to accompany transfers of title. Other commenters contended that it is unnecessary to include information and copies of records related to the production of the biointermediate for each party that takes custody of the biointermediates, as it is only the renewable fuel producer that ultimately needs the records demonstrating that the biointermediate was produced from renewable biomass under an EPA-approved pathway. Other commenters argued even further that no PTD requirements were necessary at all for transfers of biointermediates as such information would be documented using customary business practices that include necessary information on bills of lading.

While we acknowledge commenters' concerns about the potential burdens of requiring PTD for biointermediates transfers of custody as well as title, PTDs for custodial transfers of biointermediates are necessary to address our concerns over potential multiple-counting of biointermediates for RIN generation and contamination of biointermediates with non-qualifying feedstocks during distribution. PTDs accompanying transfers of custody of products establish a paper trail that can be verified by third-party auditors and EPA. This is particularly important in the case of biointermediates because, unlike most other feedstocks covered under the RFS program (*e.g.,* corn starch), biointermediates can often be used as both a renewable fuel and a feedstock. This potential dual use significantly increases the opportunities for multiple-counting of a single volume as both a biointermediate and a renewable fuel, and for associated RIN fraud.

However, we recognize that much of the information that we proposed to require be transferred along with each custody transfer of a batch of biointermediate is only necessary for the renewable fuel producer. Therefore, we are requiring that only the basic identifying information for the batch of biointermediate be included on PTDs for transfers of custody.[229] We note that this approach is consistent with how we handle transfers of custody for gasoline and diesel fuel under 40 CFR part 1090, which also applies to the transfer of most renewable fuels, such as denatured ethanol and biodiesel, under the RFS program.[230] We believe, as some commenters suggested, that basic identifying information for batches of biointermediates is likely already included on bills of lading[231] for the distribution of biointermediates and similar products; as such, requiring this information be provided via a PTD for custody transfers will not be unnecessarily burdensome. However, it is important to also require this information via PTDs for custody transfers so that parties will keep such information in a standardized format for third-party and EPA auditing. We also note, that without regulatory PTD requirements, parties would likely not maintain PTDs for periods of time consistent with the record retention periods under the RFS program.[232]

We also received comments on our proposed PTD requirements that the information we proposed to require for transfers of title[233] of biointermediates is unnecessary to track their distribution. However, as discussed more thoroughly in Section VII.C.1, because the renewable fuel producer is ultimately responsible for the validity of any RINs generated from the biointermediate, it is necessary that the renewable fuel producer receive sufficient information from the biointermediate producer to demonstrate that the biointermediate, and therefore the renewable fuel, was produced from renewable biomass under an approved pathway. It would therefore be inappropriate not to require the transfer of any of this information between the biointermediate and renewable fuel producers. We also point out that even if some of the information specified in the PTD requirements for biointermediates is covered as part of customary business practice, not all of it is, and parties may not keep the PTDs as records in a way that is conducive to third-party and EPA oversight. We are therefore finalizing PTD provisions requiring that the information necessary to demonstrate that the biointermediate was produced from renewable biomass and via a process included under an EPA-approved pathway be included for transfers of title for the biointermediate.

We are not finalizing proposed changes to PTD requirements for RINs generated from renewable fuel produced from biointermediates. In the NPRM, we proposed that RIN PTDs would need to identify that the RINs were generated for renewable fuels produced from biointermediates as well as the EPA-issued company and facility numbers of the biointermediate producer. We explained that by requiring such information on the RIN PTDs, parties that transfer or use such RINs would better understand whether they were transferring and using RINs generated from renewable fuels produced from

[229] For reference, these elements include the name and address of the transferor and transferee, the transferor's and transferee's EPA-issued registration numbers, the volume of biointermediate being transferred, the date of the transfer, and the location of the biointermediate at the time of the transfer.

[230] See 40 CFR part 1090, subpart L.

[231] A bill of lading is a document issued by a carrier to a shipper that details the type, quantity, and destination of the goods being carried. Under EPA's fuels programs, parties have typically included PTD language requirements on bills of lading for the product being transferred; however, EPA does not specify which specific document that EPA's PTD language requirements is included on as long as a document containing the applicable, required PTD language accompanies the transfer.

[232] The record retention requirements for RFS are located at 40 CFR 80.1454(n).

[233] In general, we expect titles of transfer to occur primarily between biointermediate and renewable fuel producers.

biointermediates. All commenters, including those that we believed would appreciate such information, opposed the additional requirement for RIN PTDs. These commenters noted that they could already obtain such information and that inclusion of such information on PTDs may cause RINs from biointermediates to not be traded and would be unnecessarily disruptive to existing RIN transactions. We appreciate the commenters' concerns and are, therefore, not finalizing the proposed RIN PTD language. Although we are not finalizing the proposed RIN PTD language, we stress here again that it is a violation of the RFS regulations to transfer or use an invalid RIN and it is incumbent upon all parties to undertake due diligence to ascertain the validity of RINs that they transfer or use to meet an RVO.

7. Registration, Reporting, and Recordkeeping Requirements

We are finalizing registration, reporting, and recordkeeping requirements related to the production, distribution, and use of biointermediates for both biointermediate producers and renewable fuel producers largely as proposed. Under the RFS program, the renewable fuel producer is always responsible for verifying and demonstrating that the renewable fuel it produces is derived from renewable biomass and was produced in accordance with an approved renewable fuel production pathway.[234] If the renewable fuel producer is using a biointermediate, however, the direct link between the renewable fuel producer and the renewable biomass supplier is lost. In such cases, the biointermediate producer is required to verify and provide records (in the form of PTDs) to the renewable fuel producer that demonstrate the feedstock used to make the biointermediate meets the definition of renewable biomass and is part of the approved renewable fuel production pathway that the renewable fuel producer intends to use to generate RINs. Therefore, additional registration, recordkeeping, and reporting requirements associated with biointermediates are needed to provide the renewable fuel producer with the information necessary to verify that the fuel they produce qualifies as renewable fuel for which RINs may be generated.

We discuss each of these requirements separately in Sections VII.C.7.a through c below.

[234] See 40 CFR 80.1473(a).

a. Registration

We are finalizing as proposed registration requirements for biointermediates producers and corresponding changes to renewable fuel producers' registration requirements to allow for the production, distribution, and use of biointermediates.[235] Under the biointermediates program, biointermediate producers must register with EPA by facility in a manner similar to renewable fuel producers. The registration information submitted by the biointermediate producer must include the basic company information (*e.g.,* company name, address of production facility, etc.) required for all EPA fuels program registrants. In addition, biointermediate producers must provide basic operational information, such as the capacity of their production facility, the processes utilized to produce the biointermediate, the feedstocks they will use, a description of their biointermediate product, and the pathway(s) they believe the biointermediate product could be used in.

Similar to renewable fuel producers, biointermediate producers must arrange for an independent third-party engineer to conduct a review for each facility. This independent third-party engineering review must include a site visit and review of the registration submission to independently evaluate the facility's ability to produce the biointermediate under an EPA-approved pathway. To implement the facility transfer limits discussed in Section VII.C.4, a biointermediate producer must identify the single renewable fuel production facility that will use its biointermediate product as part of the registration information reviewed by the third-party engineer and submitted to EPA.

In order to use a biointermediate, existing renewable fuel producers must also update their registration information to demonstrate that the renewable fuel production facility can produce qualifying renewable fuel from the biointermediate. A renewable fuel producer cannot use a biointermediate until EPA has accepted both the biointermediate producer's and the renewable fuel producer's registration materials reflecting the production and use of the biointermediate.

Similar to renewable fuel producers' registrations, biointermediate producers must submit updated registration information every three years, including a new independent third-party engineering review. In addition, biointermediate producers must update their registration materials between three-year updates if specified changes in their operations occur.[236] A biointermediate producer must also comply with any other applicable registration requirements related to the particular renewable biomass feedstock(s) that would otherwise apply to a renewable fuel producer (*e.g.,* submitting separated food waste plans and requirements related to the use of crop residue as a feedstock).

We note that acceptance by EPA of a registration submission does not represent a determination by EPA of substantive compliance with applicable regulatory requirements. Biointermediate producers, as has been the case for all renewable fuel producers since the start of the RFS program, are responsible for ensuring on a continual basis that all applicable regulatory requirements are satisfied. For biointermediate producers, this includes, but is not limited to, the requirement to produce biointermediates from renewable biomass and in compliance with EPA-approved pathways.

b. Reporting and EMTS

We are finalizing, with minor revisions based on comments received, reporting requirements for biointermediates producers that will help EPA oversee the program and that will serve as the basis for third-party verification of the production, distribution, and use of biointermediates.[237] Under the biointermediates program, biointermediate producers must submit quarterly reports to EPA that include feedstock and process information by batch, volume of the batch, renewable content of the batch, and cellulosic content of the batch (if applicable), as well as the specific renewable fuel facility where the batch of biointermediate was sent to be used for the production of renewable fuel. The biointermediate producer must also designate each batch that is intended to be used as a renewable fuel feedstock, so that the biointermediate batches are directly linked to the renewable fuel

[235] The registration requirements for biointermediate producers and the modifications to the registration requirements for renewable fuel producers are both located at 40 CFR 80.1450.

[236] See 40 CFR 80.1450(d) for changes where a biointermediate producer must update their registration information.

[237] The reporting requirements for biointermediate producers as well as the modified reporting requirements for renewable fuel producers are located at 40 CFR 80.1451. The modifications to the EMTS reporting requirements for RIN generation are located at 40 CFR 80.1452.

batches produced from that biointermediate. Like renewable fuel producers, biointermediate producers may also have to submit periodic reports based on their use of specific feedstocks or processes.

We are also finalizing as proposed changes to the periodic reporting requirements for renewable fuel producers that use a biointermediate to help EPA ensure that biointermediates are being used appropriately. These changes include the reporting of the types and quantities of biointermediates used to produce batches of renewable fuel and the processes used and proportion of renewable volume attributable to each biointermediate.[238] These revised reporting requirements will help EPA monitor compliance concerning the production and use of biointermediates by linking the volume of biointermediate produced by a biointermediate producer with the volume of renewable fuel produced by a renewable fuel producer.

We are finalizing as proposed provisions requiring that renewable fuel producers report additional information in EMTS related to the generation of RINs from renewable fuels produced from biointermediates. For EMTS, the renewable fuel producer utilizing biointermediates in the production of renewable fuel must report the type and quantity of biointermediates used for the batch and the EPA company and facility registration number for each biointermediate production facility. Renewable fuel producers utilizing biointermediates must report in EMTS the total co-products and the process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process and feedstock.

By the effective date of this action, we intend to complete modifications to EMTS to accommodate these updated reporting requirements for producers of renewable fuel to help track and ensure that biointermediates are used appropriately. Due to the similarity between the ways that biointermediates will be used and existing feedstocks are already being used, biointermediates use will be tracked through EMTS. In addition, aligning batches of RINs generated for renewable fuel with the biointermediate batches used to produce the fuel will help EPA ensure that volumes of biointermediates are appropriately used to generate valid RINs.

These reporting requirements and tracking in EMTS will help EPA monitor the generation of RINs for renewable fuel produced from biointermediates, thereby reducing the potential for fraud and enhancing the integrity of the program.

In the proposed rule, we sought comment on whether any additional functionality in EMTS would be helpful to implement the biointermediate program. Specifically, we sought comment on whether we should implement functionality that would allow transactors of RINs to see whether a RIN was generated from a biointermediate. We received several comments with suggestions on potential functional improvements to EMTS. We will consider such feedback as we prioritize future EMTS development.

c. Recordkeeping

We are finalizing recordkeeping requirements for biointermediate producers as proposed.[239] Under these recordkeeping requirements, biointermediate producers must comply with essentially the same feedstock and process-related recordkeeping requirements as those in place for renewable fuel producers. Since the biointermediate producer is a party between suppliers of feedstocks listed in Table 1 and the renewable fuel producer, the biointermediate producer must maintain records related to the purchase of feedstocks used to produce the biointermediate. Biointermediate producers must also maintain appropriate records that demonstrate that feedstocks meet the definition of renewable biomass. Finally, biointermediate producers must keep records of any calculations the biointermediate producer used to determine the renewable content and cellulosic content of the biointermediate, as applicable. This information must be conveyed to any renewable fuel producer that uses the biointermediate as part of the required PTDs as discussed in Section VII.C.6. Renewable fuel producers must maintain these PTDs in addition to complying with their current recordkeeping requirements.

8. Attest Engagements

We are finalizing attest engagement requirements for biointermediate producers as proposed.[240] Under the biointermediates program, biointermediate producers must undergo annual attest engagements similar to annual attest engagement requirements for renewable fuel producers. The attest engagements for biointermediate producers will help ensure that information contained in records is consistent with reported information to EPA as part of registration and periodic reporting. The attest engagement for biointermediate producers must be conducted by an outside certified public accountant or certified independent auditor following procedures specified in the regulations to determine whether the underlying records for the biointermediate, the reported information to EPA, and copies of PTDs provided to the renewable fuel producer agree. The attest auditor must also validate the list of renewable fuel producers receiving any transfer of biointermediate batches to assure that the transfer limits discussion in Section VII.C.4 are met. The attest auditor must issue a report to EPA detailing the audit, their procedures, and any findings. We are also finalizing corresponding changes to the attest engagements for renewable fuel producers to ensure that attest auditors verify records, reports, and PTDs related to the use of a biointermediate by the renewable fuel producer.

9. Liability, Prohibited Activities, and Invalid RINs Related to Biointermediates

We are finalizing with modifications provisions that establish prohibited activities related to biointermediates, how biointermediate producers and renewable fuel producers will be held liable, when biointermediates will be determined to be invalid, and provisions related to the treatment of invalid RINs related to biointermediates.

a. Liability in Cases Where a Biointermediate is Noncompliant

We are finalizing as proposed provisions that specify that both the biointermediate producer and renewable fuel producer are liable for cases where a biointermediate is determined not to comport with applicable regulatory requirements.[241] Renewable fuel producers are ultimately responsible for ensuring that any biointermediate used to produce renewable fuel complies with the applicable statutory and regulatory requirements, consistent with the

[238] The related forms for RFS producers are available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/how-report-quarterly-and-annually-renewable-fuel.*

[239] The recordkeeping requirements for biointermediate producers are located at 40 CFR 80.1454.

[240] The requirements for annual attest engagements for biointermediate producers and the modification for annual attest engagements for renewable fuel producers are located at 40 CFR 80.1464.

[241] The liability provisions for biointermediate producers and renewable fuel producers that use biointermediates is located at 40 CFR 80.1461.

requirement that they use qualifying feedstocks and processes to produce renewable fuels and generate RINs. Submission and EPA acceptance of feedstock and process descriptions in registration materials does not represent a determination by EPA that the actual feedstocks and processes used by a facility are in fact compliant with the RFS regulations; the responsibility of ensuring that they comply with applicable requirements on a continuing basis rests with both the renewable fuel producer and the biointermediate producer.

In order to fulfill the statutory mandate that renewable fuel is produced from renewable biomass, the renewable fuel producer must be able to demonstrate that the feedstocks they are using are, or are derived from, renewable biomass and are consistent with the feedstocks permitted under the renewable fuel production pathway utilized. When a biointermediate is being used to produce renewable fuel, the renewable fuel producer may not have direct access to the information needed to make these demonstrations. Therefore, the biointermediate producer must demonstrate both to EPA and to the renewable fuel producer that the biointermediate is produced from renewable biomass and via processes consistent with the applicable pathway. To ensure appropriate levels of oversight by renewable fuel producers, we do not believe that the renewable fuel producer should be held harmless in the event that the biointermediate is determined to not be derived from renewable biomass or is determined to be unauthorized under the pathway utilized by the renewable fuel producer. Therefore, either or both the biointermediate producer and the renewable fuel producer are potentially liable for violations involving the improper production or characterization of a biointermediate used to produce renewable fuel for which RINs were generated. This is true both where any errors could be characterized as having been made in good faith, and in situations involving deliberate fraud.

This approach has been used extensively in other EPA fuels programs (*e.g.,* gasoline and diesel programs) where it is presumed that violations that occur at downstream locations (*e.g.,* a retail station selling gasoline) were caused by all parties that produced, distributed, or carried the fuel. If, for example, a biointermediate producer were to use feedstocks that do not meet the definition of a renewable biomass, then both the biointermediate producer and the renewable fuel producer could be liable for the violation. Another example is if a party generated a RIN for a product as a renewable fuel and then sold that product as a biointermediate to a renewable fuel producer who also generated a RIN for the product. In such a case, both the original producer of the biointermediate and the renewable fuel producer will be liable under this approach.

b. Prohibited Activities

We are finalizing as proposed several amendments and additions to the prohibited activities related to the production, distribution, and use of biointermediates.[242] Specifically, we are finalizing the following prohibited activities:

- No person may introduce into commerce for use in the production of a renewable fuel any biointermediate produced from a feedstock or through a process that is not described in the person's EPA-accepted registration information;
- No person may produce a renewable fuel at more than one facility unless the person uses a biointermediate as defined under § 80.1401 or the renewable biomass is not substantially altered; [243]
- No person may transfer a biointermediate from a biointermediate production facility to a facility other than the renewable fuel production facility specified in the biointermediate producer's EPA-accepted registration information;
- No person may isolate or concentrate non-characteristic components of the feedstock to yield a biointermediate not identified in a registration accepted by EPA; and
- No person may generate a RIN for fuel that was produced from a biointermediate for which the fuel and biointermediate were not audited under an EPA-approved quality assurance plan.
- No person may transfer a biointermediate without complying with the PTD requirements in 40 CFR 80.1453(f).

We are modifying from our proposal the prohibited act that ''no person may isolate or concentrate non-characteristic components of the feedstock to yield an intermediate product not contemplated by EPA in establishing an approved pathway that the biointermediate producer and the renewable fuel producer are using to convert renewable biomass to renewable fuel.'' [244] The purpose of this proposed prohibited act was to ensure that a biointermediate producer will not isolate or concentrate certain components of feedstocks to produce a biointermediate that will no longer comport with the EPA-approved pathway identified in the biointermediate producer's accepted registration submission. For example, if a party is registered to produce a biointermediate for the production of cellulosic biofuel, the party would be prohibited from removing all cellulosic material from a cellulosic feedstock and still representing the biointermediate as being cellulosic. However, we recognize that the proposed language did not clearly communicate our intent or the prohibited act. We are therefore rewording the prohibited act to say that no person may isolate or concentrate non-characteristic components of the feedstock to yield a biointermediate not identified in a registration accepted by EPA. The purpose of this clarification is to state that biointermediate producers may not deviate from the processes and feedstocks for the production of biointermediates that EPA has accepted and registered them to use. We note that using a biointermediate or other feedstock that is inconsistent with a facility's registration information is prohibited regardless of this specifically enumerated prohibited act as it is a violation of the RFS regulations for a party to fail to meet any requirement of 40 CFR part 80, subpart M.[245] The inclusion of this prohibited act is for emphasis and clarity.

We are also adding a prohibited activity that states that no person may transfer a biointermediate without complying with the PTD requirements at 40 CFR 80.1453(f). As described in Section VII.C.6, the PTD requirements for biointermediates are an integral aspect of ensuring that renewable fuel producers have the necessary information to generate valid RINs. PTDs are also a fundamental component of our oversight and verification provisions for biointermediates and renewable fuels produced from biointermediates. We also received a comment that asked EPA to clarify the treatment of RINs for renewable fuels produced from biointermediates that were not accompanied by PTDs or were accompanied by incomplete or non-compliant PTDs. The commenter noted that because PTD review would be part of the QAP process for biointermediates

[242] The prohibited activities related to the production, distribution, and use of biointermediates, as well as other prohibited activities under the RFS, are located at 40 CFR 80.1460.

[243] The allowable form changes, *i.e.,* form changes that do not result in substantial alteration of the renewable biomass feedstock, are described in the regulations at 40 CFR 80.1460(k)(2).

[244] 86 FR 72495.

[245] See 40 CFR 80.1460(f).

and renewable fuels produced from biointermediates, they believed it likely that the issue of RINs being generated from biointermediates without compliant PTDs would occur and that EPA should identify how those RINs would be treated. Under the scenario outlined by the commenter, the RINs would be invalid under 40 CFR 80.1431 because the regulations at 40 CFR 80.1426(a)(1)(iii) require that the renewable fuel producer meet the applicable recordkeeping requirements, which include maintaining copies of all applicable PTDs. Again, we note that regardless of the inclusion in the regulations of this specifically enumerated prohibited act, it is a violation of the RFS regulations for a party to fail to meet any requirement of 40 CFR part 80, subpart M, including the requirements to transfer and maintain compliance PTDs.[246]

We believe that these prohibited activities will provide certainty to regulated parties with regard to the production, distribution and use of biointermediates and renewable fuels made from biointermediates. These provisions will help to provide strong incentives on the part of renewable fuel producers to diligently be involved in overseeing the production, transfer, and use of biointermediates. Finally, these provisions are necessary to address the increased complexity of allowing renewable fuels to be processed at more than one production facility.

c. Invalid RINs From Biointermediates

We are finalizing as proposed provisions that address the treatment of invalid RINs generated on renewable fuels produced from biointermediates. Due to the potential complexity involved in determining the validity of RINs generated for renewable fuel produced from a biointermediate, we are requiring that if any of the RINs in any batch of renewable fuel produced from a biointermediate are deemed invalid, then all RINs generated for that batch of renewable fuel will be considered invalid except to the extent that EPA, in its sole discretion, determines that some of these RINs would be valid. Circumstances in which invalid RINs generated on renewable fuels produced from biointermediates could arise include: where multiple biointermediates and/or non-biointermediate feedstocks are simultaneously processed to make renewable fuel with the same D-code; where biointermediates and/or non-biointermediate feedstocks are simultaneously processed that result in multiple D-codes; and where biointermediates are co-processed with non-renewable biomass (*e.g.,* crude oil). Given the range of scenarios utilizing biointermediates to produce renewable fuels that would be permitted under this action and based on discussions with parties that have expressed interest in using various types of biointermediates in the future, we believe it is important to address such circumstances clearly in the regulations as apportioning which RINs were tied to which gallons of renewable fuel made in these situations is complicated.

In all cases where a RIN is generated for a batch of renewable fuel produced using a biointermediate is invalid, we are requiring that all RINs generated from the renewable fuel be presumed invalid unless EPA, in its sole discretion, determines that a portion of the RINs should remain valid. This means that even if multiple, different RIN batches would be generated in EMTS for apportioned volumes of the batch of renewable fuel, all RIN batches in their entirety would be invalid if any amount of non-qualifying biointermediate was used to generate any RIN on any volume of the renewable fuel. This will also include situations where the multiple RIN batches were for different D-codes or where multiple types of biointermediates were used. We believe this provision is appropriate to avoid having to determine specifically which RINs are invalid in situations where biointermediates are processed simultaneously with other feedstocks, as apportioning RINs based on the constituent components of a renewable fuel is highly complex when multiple biointermediates and other feedstocks, all with differing feedstock energies and volumes, are used. This provision will provide a strong incentive for renewable fuel producers to conduct due diligence oversight procedures on the biointermediate producer to avoid the invalidation of an entire batch of RINs.

We are also finalizing that, where the renewable fuel is a renewable diesel, renewable gasoline, renewable diesel blendstock, or renewable gasoline blendstock, if a RIN is invalid under 40 CFR 80.1431(a)(1), the gallon of gasoline or diesel fuel for which the RIN was generated would incur an RVO. The regulations for calculating RVOs at 40 CFR 80.1407(f)(1) already exclude ''[a]ny renewable fuel as defined in § 80.1401'' from the volume of gasoline or diesel fuel produced or imported used to calculate an obligated party's annual RVO. In many cases, RINs are determined to be invalid because the renewable fuel was not made from renewable biomass, the RINs were multiple-counted, or were otherwise invalidly generated. In such cases, any volume of renewable gasoline or renewable diesel fuel will no longer be considered renewable fuel and therefore cannot be excluded from an obligated party's RVO.

10. Foreign Biointermediate Producers

We are finalizing provisions for the use of biointermediates produced by foreign biointermediate producers. In general, foreign biointermediate producers are subject to the same regulatory requirements (*e.g.,* recordkeeping, reporting, registration, and PTD requirements) as domestic biointermediate producers. However, we are finalizing requirements for additional requirements for foreign biointermediates in two main areas.

For the first requirement, under the biointermediates program, foreign biointermediate producers must comply with requirements similar to those for foreign renewable fuel producers as described in 40 CFR 80.1466 related to inspection and audit, agent appointment for service of process, and the application of U.S. substantive and procedural laws to any civil or criminal enforcement action.[247] These requirements for foreign biointermediate producers will allow EPA to monitor the producers and carry out enforcement actions should a violation occur outside the U.S.

For the second requirement, we are finalizing a requirement that foreign biointermediate producers may only transfer their biointermediates to domestic and foreign RIN-generating renewable fuel producers. This means that foreign biointermediate producers will not be allowed to transfer their biointermediate to non-RIN-generating foreign producers. This limitation serves three purposes. One, non-RIN generating renewable fuel producers are not subject to certain requirements for registration that we believe are necessary to effectively oversee the production of biointermediates. RIN-generating renewable fuel producers are required to provide in EMTS the type

[246] See 40 CFR 80.1460(f).

[247] The primary difference between the foreign renewable fuel producer requirements under 40 CFR 80.1466 and the foreign biointermediate producer requirements under 40 CFR 80.1478 is that foreign biointermediate producers do not have to post a bond. Bonds are required in cases where a foreign party generates or owns RINs (*i.e.,* foreign RIN-generating foreign producers and foreign RIN owners). Since foreign biointermediate producers are not generating RINs, we are not requiring them to post a bond. However, if a foreign biointermediate producer would otherwise be required to post as bond by either generating or owning RINs, the bonding provisions under 40 CFR 80.1466 would apply.

and volume of the biointermediate used and the registration number of the biointermediate production facility as well as obtain a bond based on the number of RINs they produce. The existence of foreign biointermediate producer's information in EMTS allows EPA to oversee all parties in the chain of RIN generation. This information is not available if foreign biointermediates are transferred to foreign non-RIN generation renewable fuel producers. The bond provides financial assets for EPA to leverage should an issue with the validity of the RINs come into question. Without these controls, we cannot effectively oversee and enforce potential issues with foreign produced renewable fuels made from biointermediates.

Two, it is unreasonable for the importer of a renewable fuel produced from a biointermediate to maintain formal contractual relationships with the biointermediate producer,[248] each party outside of the United States that distributed the biointermediate outside of the United States, and the foreign renewable fuel producer. Importers of renewable fuel are typically domestic companies that specialize in the importation and distribution of products into the U.S. and often lack the foreign presence to effectively and independently oversee biointermediate production, transfer, and use by foreign parties. We have structured the biointermediates program to provide incentives (*e.g.,* through the treatment of invalid RINs discussed in Section VII.C.9) for renewable fuel producers to ensure that biointermediate producer complies with applicable EPA regulatory requirements. We believe the chain of parties involved in the production of renewable fuel from a biointermediate outside the U.S. is too attenuated for the importer of the renewable fuel to reasonably conduct due diligence without the safeguards imposed by EPA for RIN-generating foreign producers discussed previously.

Three, similar to the concerns highlighted for importers, we do not believe that the RFS QAP provisions would effectively cover a situation with three parties—a foreign biointermediate producer, non-RIN-generating foreign producer, and renewable fuel importer—in the chain. As discussed in Section VII.C.5, RIN-generating renewable fuel producers that use biointermediates must participate in the RFS QAP and that the same QAP auditor must verify both the foreign biointermediate producer and RIN-generating foreign producer. Adding a third-party in this chain would significantly increase the complexity of the QAP verification process and would necessitate further amendments to the RFS QAP program and associated implementation measures to verify RINs generated from such a production chain. To accommodate these three-party verification schemes (*i.e.,* verification of the biointermediate producer, the foreign renewable fuel producer, and the renewable fuel importer), we would require consider time to develop our systems and review quality assurance plans, which could significantly delay implementation of the program and acceptance of foreign biointermediates into the program.

We received comments suggesting that we exempt foreign ethanol producers that produce undenatured ethanol used as a biointermediate from the transfer limits discussed in Section VII.C.4. Specifically, commenters suggested that we exempt foreign ethanol producers that designate their undenatured ethanol as a biointermediate from the batch segregation requirement and the limit on biointermediate producers supplying only a single renewable fuel production facility.[249] As explained above, these requirements are in place to ensure that biointermediates are produced using qualifying renewable biomass under an EPA-approved pathway and are not multiple-counted for RIN generation. Commenters said that they believed that existing provisions for foreign ethanol producers under the RFS coupled with TTB requirements for the control and tracking of undenatured ethanol in the U.S. rendered the biointermediate provisions unnecessary. They noted that the proposed biointermediate provisions would likely make the transfer of foreign undenatured ethanol for use as a biointermediate infeasible. Finally, some commenters noted that foreign ethanol producers cannot meet the proposed foreign biointermediate provisions under their current production and distribution practices.

We are not finalizing any changes to the requirements for foreign biointermediate producers as they apply to foreign undenatured ethanol producers at this time. While we appreciate commenters' concerns regarding how the foreign ethanol producer provisions intersect with the biointermediates provisions, we believe that the tracking afforded by the biointermediate provisions is necessary to ensure that undenatured ethanol, including foreign undenatured ethanol, is properly produced (*i.e.,* produced from qualifying renewable biomass under an EPA-approved pathway), distributed (*i.e.* not commingled with non-qualifying undenatured ethanol), and used (*i.e.,* only used as a biointermediate and not double-counted as renewable fuel and a biointermediate). We do not believe it is appropriate at this time to create disparate regulatory regimes for different biointermediates. One of the primary goals of establishing a common regulatory framework that applies to all biointermediates is to help ensure consistency and fairness in the treatment of renewable fuels produced at multiple locations while at the same time ensuring the valid generation of RINs. Creating a separate regulatory regime for foreign undenatured ethanol is not consistent with our intent to create a common regulatory framework that could address the use of many different types of biointermediate.

Commenters failed to explain how TTB requirements, which are largely designed to ensure that undenatured ethanol is appropriately taxed, would effectively ensure that undenatured ethanol used as a biointermediate to produce renewable fuel was produced from qualifying renewable biomass and used under an EPA-approved pathway consistent with the RFS program requirements. We also note that TTB requirements only apply to domestic undenatured ethanol and do nothing to effectively track and oversee undenatured ethanol produced and distributed outside of the U.S. While we appreciate that TTB requirements for undenatured ethanol could help ensure the tracking of undenatured ethanol in the U.S., we do not believe those requirements are substitutes for the biointermediate provisions, especially as they apply to foreign biointermediate producers.

Furthermore, as mentioned above, the foreign biointermediate producer provisions largely mirror the requirements that already apply to foreign renewable fuel producers, including foreign ethanol producers. Therefore, we believe that foreign

[248] The requirements regarding the distribution of foreign renewable fuels are described at § 80.1466 and for foreign biointermediates at § 80.1478.

[249] Under the biointermediates program, foreign undenatured ethanol is not presumed to be a biointermediate. Under the provisions for foreign undenatured ethanol, the importer of the undenatured ethanol must denature the ethanol and generate RINs for the denatured fuel ethanol as a renewable fuel. However, under the biointermediates program, for any undenatured ethanol (foreign or domestic) to be used as a biointermediate, the producer of the undenatured ethanol must designate the undenatured ethanol as a biointermediate and comply with the applicable provisions for the production, transfer, and use of the undenatured ethanol as a biointermediate.

ethanol producers should already be meeting the requirements as specified in 40 CFR 80.1466, and the foreign biointermediate producer provisions should not impose any additional burden on parties that are already complying with the regulations.

D. Other Considerations Related to Biointermediates

1. C–14 Testing and Mass Balance for RIN Generation

We are finalizing provisions that ensure for the accurate measurement of renewable content in cases where biointermediates are co-processed with petroleum feedstocks at a renewable fuel production facility. Specifically, we are finalizing three options: (1) C–14 measurement using Method B of ASTM D6866, (2) C–14 measurement using Method C of ASTM D6866 (with some restrictions as explained below), and (3) facility-specific, alternative methods for measuring renewable content as approved by EPA. Under this approach, we would not allow the use of mass balance as specifically described in the regulations at 40 CFR 80.1426(f)(4)(i)(A) (*i.e.,* ''Method A''); however, we may consider other mass balance approaches when considering facility-specific, alternative methods.

We proposed that only C–14 testing, specifically Method B (accelerator mass spectrometry) of ASTM D6866, be used in cases where biointermediates are co-processed with petroleum feedstocks at a renewable fuel production facility. We explained that we were proposing to require C–14 testing because we believed that the volume of biointermediate co-processed with petroleum at a crude refinery would likely be a small fraction of the refinery's throughput, which would make it difficult to rely on a mass balance approach for RIN generation.[250] Our primary concern was, and still is, that the co-processed fuel would contain little or no renewable content from the biointermediate and that using the mass balance approach, which determines renewable content based on assumptions rather than direct measurement, could overestimate renewable content and therefore result in the generation of RINs for the nonrenewable portion of the co-processed fuel. Thus, in order to determine if and how much renewable content is actually present, we believed C–14 testing of the finished fuel would be necessary. We also sought comment on potential alternatives to direct C–14 measurement of renewable content of co-processed fuels.

We received a range of comments on our proposal. Some commenters recognized that Method B of ASTM D6866 is the most accurate way to measure renewable content in processed fuels, and with the support of these comments and for the reasons set out in the proposed rule, we are finalizing the use of Method B of ASTM D6866 as one option for the measurement of renewable content of co-processed renewable fuels from biointermediates.

Other commenters mentioned that mass balance could be more accurate than direct C–14 measurement in some circumstances, especially at lower concentrations of renewable content or when samples are contaminated with artificial C14 (the latter of which would make the test not compliant with ASTM D6866–22). However, commenters did not provide any new data or information suggesting how mass balance could more accurately measure low concentrations of renewable content. Specifically, commenters did not address how ''Method A'' as specified in the regulations at 40 CFR 80.1426(f)(4)(i)(A) could produce accurate results at low renewable fuel concentrations. As explained above, we are concerned that a mass-balance approach may not accurately estimate renewable content in a finished fuel when very small amounts of biointermediates are co-processed with petroleum fuels and are therefore finalizing our proposal that ''Method A'' cannot be used to determine renewable content for co-processed renewable fuels produced from biointermediates.

In the NPRM, we also sought comment on the potential use of Method C of ASTM D6866. We received comments asserting that this method is more cost-effective than method B. While some comments expressed concern that Method C is less accurate, especially at lower concentrations of biogenic content, other commenters stated that it should be allowed for use as it has a similar absolute uncertainty as Method B of ASTM D6866. While we appreciate that Method C is cheaper and more widely available, we still have concerns about its efficacy at lower concentrations of renewable content in co-processed fuels. Based on commenters' suggestions, we are finalizing provisions that allow for the use of Method C of ASTM D6866 when the renewable content of the co-processed fuel is at or above 10 percent. ASTM D6866–10 discusses how the increased accuracy of Method B, relative to Method C, is recommended when measuring below 10 percent renewable content, so limiting Method C to circumstances in which the renewable content at or above 10 percent balances the concern for accuracy with the cost of analysis.[251]

We received several suggestions in response to our request for other potential alternatives. Commenters suggested that statistical models could be developed based on initial C–14 validation testing which could be approved as facility-specific approaches. Other commenters requested that we allow the use of a performance-based approach to approving new methods for renewable content measurements similar to what we allow under our performance-based measurement system (PBMS) under the 40 CFR part 1090 fuel quality regulations.

While we continue to believe that direct C–14 measurement, specifically Method B of ASTM D6866, is the most accurate and precise way to determine the renewable content of co-processed fuels, we recognize that other methods, especially when tailored to a specific facility, could provide an accurate assessment of renewable content in co-processed fuels made from biointermediates. Based on commenters' suggestions that we provide a mechanism to approve facility-specific measurement procedures, we are finalizing an approach under which EPA can approve facility-specific alternatives to testing using Method B or Method C of ASTM D6866. This is consistent to what we currently allow for co-processed renewable fuels (see 40 CFR 80.1426(f)(9)(ii)), and we believe that such a facility-specific approach can potentially accommodate a wide range of alternatives. However, we note that while we may approve mass balance approaches tailored to specific facilities under this option, we would only intend to approve such an approach if the renewable fuel producer provides sufficient information about all inputs and outputs for the facility that is co-processing the biointermediate and validates assumptions used in any mass balance approach with data and testing that demonstrate that renewable biomass actually results in the production of renewable fuel.

2. Implications of Using Biointermediates for Lifecycle GHG Assessments

We are not making any changes to Table 1 to 40 CFR 80.1426 as a result

[250] See Martin R. Haverly et al., Biobased Carbon Content Quantification through AMS Radiocarbon Analysis of Liquid Fuels, 237 Fuel, 1108, (2019).

[251] See ASTM D6866–10, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' available in the docket for this action.

of allowing biointermediates to be used under the RFS program. Each renewable fuel pathway consists of a fuel type, feedstock, and production process. Under the RFS program, we must assess lifecycle GHG emissions for each potential pathway to determine whether it meets the GHG reduction threshold, as compared to the 2005 statutory petroleum baseline, for one or more of the four renewable fuel categories. Table 1 contains the many generally applicable pathways for which we have we assessed the lifecycle GHG emissions and assigned D codes. We are finalizing our proposed approach to creating and implementing a biointermediates program that maintains the framework of the existing pathways in Table 1 and provides that those pathways can now be followed through the production and use of a biointermediate. That is, the Table 1 pathways can now be implemented at more than one facility—a biointermediate production facility and the renewable fuel production facility.

Before this action, each pathway involved the conversion of a type of renewable biomass feedstock to a renewable fuel at one facility. The allowance of biointermediates in this action means that, under certain circumstances, a feedstock can now be processed at more than one facility. This additional flexibility does not change the requirement that to be eligible to generate RINs, fuels must be produced through an approved pathway. Although Table 1 does not explicitly list biointermediates or biointermediate processing requirements, fuels produced from biointermediates can qualify for existing Table 1 pathways. For example, row M in Table 1 includes a pathway for renewable gasoline produced from crop residue through a process of ''catalytic pyrolysis and upgrading process . . . utilizing natural gas, biogas, and/or biomass as the only process energy sources.'' Crop residue converted to biocrude via catalytic pyrolysis at one facility and then upgraded to renewable gasoline at another facility that uses only natural gas for process energy would be eligible for cellulosic biofuel (D-code 3) RINs through the row M pathway provided that all other applicable regulatory requirements are satisfied. As this example illustrates, the addition of a biointermediate does not change the pathway other than conducting the same processing steps at two facilities instead of one.

We do not believe that the additional flexibility for biointermediates provided in this action necessitates changes to Table 1 on the basis of lifecycle GHG emissions. EPA evaluated the lifecycle GHG emissions associated with each pathway before it was added to Table 1 and determined that each pathway met the applicable GHG reduction requirement corresponding to the RFS fuel category. In general, these evaluations assumed that the bulk renewable biomass would be converted to renewable fuel at one facility. Compared to these prior evaluations, allowing the processing of renewable biomass to renewable fuel to occur at more than one facility may affect the emissions associated with transporting the bulk biomass, biointermediates and renewable fuels through the supply chain. However, we expect that in most cases the overall transportation emissions would decrease or be minimally affected. We anticipate that a supply chain that includes biointermediates would likely involve a ''hub and spoke'' arrangement with multiple biointermediate production facilities, located close to biomass collection points, that supply biointermediates to a single renewable fuel production facility. Relative to a supply chain that involves conversion at one facility, the hub and spoke model would reduce transport distances of bulk biomass and add transport of biointermediates. Renewable biomass is typically less energy dense (*i.e.,* less calorific energy per ton) than the resulting biointermediate. Renewable biomass is also typically more challenging logistically to transport than biointermediates because it is often more difficult to store (*i.e.,* more likely to degrade) and less uniform in shape and consistency relative to the biointermediate. For these reasons, bulk biomass typically requires more energy and associated GHG emissions to transport relative to the resulting biointermediate. In some cases, the biointermediate supply-chain may add to the overall transport distance of materials relative to a supply chain with only one facility, but in these cases, we expect the lower GHG emissions per ton-mile of material transport to offset the longer overall distance. Thus, by replacing transport of renewable biomass with transport of biointermediates we expect the biointermediate supply chains to either reduce or not significantly affect supply chain transportation and distribution related GHG emissions. For these reasons, and given that transportation and distribution GHG emissions are often small relative to other lifecycle stages, we do not expect the allowance of biointermediates to significantly increase the lifecycle GHG emissions associated with these fuel pathways relative to our existing estimates.

Under the biointermediates provisions, all of the pathways currently applicable to renewable fuel under Table 1 would allow for the use of biointermediates provided implementation of the pathway using a biointermediate: (1) starts with the renewable biomass feedstock specified in the Table 1 pathway; (2) produces the fuel specified in the Table 1 pathway; (3) converts the renewable biomass feedstock to a biointermediate and the biointermediate to the renewable fuel using processes that are consistent with the production process requirements specified in the Table 1 pathway; and, (4) satisfies all of the other applicable regulatory requirements. Of course, qualifying renewable fuel cannot be made from a biointermediate if the fuel production pathway is not listed in Table 1 or otherwise approved by EPA.

In addition to the generally applicable pathways in Table 1, EPA has also approved many facility-specific pathways in response to petitions submitted pursuant to the process at 40 CFR 80.1416. These approvals are based on our evaluations of the GHG emissions associated with the particular processes, materials used, fuels produced, and process energy types and amounts outlined and described in each of the facility-specific petition requests. Because our lifecycle GHG analyses and pathway approvals are specific to the precise processes, materials, etc. described in petitions, we are not allowing existing facility-specific pathways to introduce the use of a biointermediate under their existing approvals. To the extent that the facility-specific determinations are already tailored to the particular circumstances of each pathway, we do not anticipate this restriction will directly affect implementation of the previously approved facility-specific pathways. In a limited number of cases, EPA previously approved facility-specific pathways that include use of a biointermediate. Existing pathway approvals that expressly allow for the use of a particular biointermediate are not affected by this action. However, if a facility producing fuel through a facility-specific pathway makes any changes in its feedstocks, processes or fuels produced that are outside the scope of its existing facility-specific pathway, including by introducing the use of a biointermediate, it would need to petition EPA for a new pathway evaluation pursuant to 40 CFR 80.1416.

As a general matter, renewable fuel produced through facility-specific pathways must be produced in

accordance with the RFS regulations at 40 CFR part 80, subpart M, including the requirements for producing renewable fuel from biointermediates that are being finalized in this action. Facility-specific petitions may also include specific conditions, as determined through the informal adjudication and pursuant to 40 CFR 80.1426(a)(1)(iii), 40 CFR 80.1416(b)(1)(vii), 80.1450(i), and 80.1451(b)(1)(ii)(W), that apply to fuel production and RIN generation. Moving forward, we intend that future facility-specific pathway approvals will allow for the use of particular biointermediates that are regulatorily defined at 40 CFR 80.1401, and that such pathways will be governed by the applicable requirements for producing renewable fuel from biointermediates, as well as any facility-specific conditions and requirements.

VIII. Amendments to Fuel Quality and RFS Regulations

This section describes the regulatory changes we are finalizing for the fuel quality and RFS programs. We address comments related to these regulatory changes in Section 11 of the RTC document.

A. BBD Conversion Factor for Percentage Standard

In the proposed rule we noted our observation that the average Equivalence Value of BBD appears to have grown over time without stabilizing, and that the average future Equivalence Value for BBD was likely to be at least 1.55. We therefore proposed replacing the factor of 1.5 in the percentage standard formula for BBD with a factor of at least 1.55. We did not propose changing any other aspect of the percentage standard formula for BBD. We received several adverse comments on this proposed definition. In light of these comments, we are not finalizing this proposed change in this rule. We will continue to monitor the average number of RINs generated per gallon of BBD, and may consider this change in a future rule.

B. Changes to Registration for Baseline Volume

We are finalizing as proposed revised registration requirements at 40 CFR 80.1450(b)(1)(v) as well as revisions to the definition of ''baseline volume'' at 40 CFR 80.1401 to allow a non-exempt (*i.e.,* non-grandfathered) renewable fuel producer to use either nameplate capacity or actual peak capacity for their facility's baseline volume if permitted capacity cannot be determined. We are not changing the requirements for establishing the baseline volume of grandfathered facilities.[252] [253] All non-grandfathered facilities with an applicable permitted capacity will continue to be required to register using that permitted capacity pursuant to 40 CFR 80.1450(b)(1)(v)(A).

We are finalizing this revision in order to allow for more up-to-date information to be used in establishing the baseline volumes of non-grandfathered facilities. The existing provision at 40 CFR 80.1450(b)(1)(v)(C) requires facilities to use actual peak capacity if the applicable air permit does not include a permitted maximum rate annual volume output. However, actual peak capacity is based on actual production tied to when EISA was enacted (*i.e.,* December 2007), which is now well more than a decade in the past. This historical peak capacity is not necessarily an accurate reflection of the facility's current production capacity. Since the passage of EISA, facilities may have improved efficiency, expanded the facility, or experienced an increase in production due to increased demand, resulting in larger production than the year used to calculate actual peak capacity. Having accurate capacity information for registered renewable fuel facilities is important for EPA in helping to identify whether facilities are generating an appropriate number of RINs.[254] This change will allow a non-exempt facility to choose whether to use actual peak capacity or nameplate capacity if permitted capacity cannot be determined. Non-exempt facilities already registered using actual peak capacity will have the option to switch to nameplate capacity at any time.[255] This change will have no impact on facilities who choose not to use this option.

[252] For purposes of this section, a ''grandfathered facility'' is a renewable fuel production facility that has volumes that are exempt from the renewable fuel lifecycle GHG reduction threshold under 40 CFR 80.1403(c). This provision exempts (*i.e.,* ''grandfathers'') facilities that commenced construction on or before December 19, 2007, did not discontinue construction for a period of 18 months after commencement of construction, and completed construction by December 19, 2010.

[253] For grandfathered facilities, baseline volume is the maximum volume of grandfathered fuel for which the facility is allowed to generate RINs. For non-grandfathered facilities, baseline volume is intended to indicate the maximum amount of renewable fuel that the facility is capable of producing. Actual peak capacity, however, may not be a good indicator of maximum capacity.

[254] Because the baseline volume of an exempt (*i.e.,* grandfathered) facility is by definition tied to either December 19, 2007, or December 31, 2009 (see 40 CFR 80.1403(c) and (d) and 80.1450(b)(1)(v)(B)), current production capacity is not relevant for such a facility.

[255] Facilities can also choose to keep their baseline volume as actual peak capacity.

C. Changes to Attest Engagements for Parties Owning RINs (''RIN Owner Only'')

We are exempting parties that transact a relatively small number of RINs from the annual attest engagement requirements. In order to qualify for this exemption, parties must be registered solely as a ''RIN Owner''. They may not be registered or engaged in any other role under the RFS program (*e.g.,* obligated party, exporter of renewable fuel, renewable fuel producer, renewable fuel importer, etc.). Until this action, such parties were required to submit an annual attest engagement under 40 CFR 80.1464(c), regardless of the number of RINs they transacted or held in a compliance year. For example, a party whose only activity was to buy and sell a single RIN in any given compliance year would have been required to complete an attest engagement for that year. Additionally, some parties that own a small number of RINs have difficulty selling small denominations of RINs (*e.g.,* hundreds of separated D6 RINs) and may end up holding those RINs until they expire. These parties would have had to then arrange for an annual attest engagement performed by a certified professional accountant (CPA) for those RINs, which can be quite costly especially when compared to the relatively low value of the small number of RINs owned.

We believe that parties who, in a given compliance year, are registered as a ''RIN Owner'' only, who transact 10,000 or fewer RINs, and who do not exceed a RIN holding threshold under 40 CFR 80.1435, should not be required to complete an attest engagement for that compliance year. A party who is registered as a ''RIN Owner Only'' does not generate RINs and does not have an RVO. We believe that the information contained in EMTS and RIN activity reports for these RIN Owners who transact a relatively small number of RINs and who do not exceed a RIN holding threshold, conveys the necessary compliance information, and that the attest engagements for these parties do not add much value relative to their expense. Many of the affected parties are smaller businesses that are required to arrange the services of a CPA to perform their annual attest engagement. Making this change to the attest engagement requirements may result in a cost savings to these typically smaller businesses, without adversely affecting RFS program oversight.

We intend that the total number of RINs transacted in the year be counted toward the 10,000 RIN limit. RINs ''transacted'' includes RINs retired for

reasons other than compliance retirements, such as the reason code ''voluntary RIN retirement.'' This means that if a party buys 5,000 RINs and sells 6,000 RINs in a year, the party will have transacted 11,000 RINs and must complete the attest engagement for that year. We are finalizing the 10,000 RIN limit based upon programmatic experience—specifically, we believe it reflects a reasonable level of activity below which the utility of the attest engagement is reduced.

D. Public Access to Information

Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' [256] In order for information to meet the requirements of Exemption 4, EPA must find that the information is either: (1) a trade secret, or (2) commercial or financial information that is: (a) obtained from a person, and (b) privileged or confidential. Information meeting these criteria is commonly referred to as ''confidential business information'' or ''CBI.'' [257]

In June 2019, the U.S. Supreme Court issued its decision in *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356 (2019) (*Argus Leader*). *Argus Leader* addressed the meaning of ''confidential'' within the context of FOIA Exemption 4. The Court held that ''[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.'' [258] The Court identified two conditions ''that might be required for information communicated to another to be considered confidential.'' [259] Under the first condition, ''information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it.'' [260] The second condition provides that ''information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.'' [261] The Court found the first condition necessary for information to be considered confidential within the meaning of Exemption 4, but did not address whether the second condition must also be met.

Following the issuance of the Court's opinion, the U.S. Department of Justice (DOJ) issued guidance concerning the confidentiality prong of Exemption 4, articulating ''the newly defined contours of Exemption 4'' post-*Argus Leader.*[262] Where the Government provides an express or implied indication to the submitter prior to or at the time the information is submitted to the Government that the Government would publicly disclose the information, then the submitter generally cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.[263]

Since the proposed rule, we have made some editorial changes to the final regulations to improve the readability of the new provisions and to harmonize the terminology used. These changes do not change the substance of the final regulations from what was proposed.

1. Treatment of Information Contained in Enforcement Actions and Invalid RIN Determinations

EPA has a longstanding practice of posting on its website or otherwise publicly releasing information describing fuels violations and invalid RIN determinations.[264] Accordingly, we are finalizing regulations to codify the types of information contained in fuels-related enforcement actions and invalid RIN determinations that are not entitled to confidential treatment pursuant to Exemption 4 of FOIA. This action covers information within notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments related to EPA's fuel quality and RFS regulations in 40 CFR parts 80 and 1090 and invalid RIN determinations related to EPA's RFS regulations in 40 CFR part 80.

Since at least 2013,[265] EPA has posted on its website or otherwise publicly released information relating to violations of the fuel quality and RFS regulations. This information includes the company name and identification number, the total quantity of fuel and information relating to the exceedance of the fuel standard associated with the violation, information relating to the generation, transfer, or use of credits or RINs, and the total quantity of RINs in question. Therefore, EPA has already provided an implied indication to any submitters of such information after at least 2013 that EPA may publicly disclose such information. Accordingly, the information is not entitled to confidential treatment, and EPA intends to continue to release such information without further notice.

Through this action, we are also providing an express indication that such information is not entitled to confidential treatment and may be affirmatively disclosed to the public without providing further notice or process to the affected businesses. This action effectively serves as an advance confidentiality determination through rulemaking and covers the information identified below. Accordingly, 40 CFR 2.201 through 2.215 and 2.301 do not apply to the specified information submitted under this part and under 40 CFR part 1090, which is determined through this rulemaking to not qualify for confidential treatment. In particular, this action impacts certain information contained in EPA determinations that RINs are invalid under 40 CFR 80.1474(b)(4)(i)(C)(*2*) and (b)(4)(ii)(C)(*2*), notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments. The information that EPA intends to continue release in the context of these determinations and actions includes the company name and company identification number, the facility name and facility identification number, the total quantity of fuel and information relating to the exceedance of the fuel standard associated with the violation, information relating to the generation, transfer, or use of credits or RINs, the

[256] 5 U.S.C. 552(b)(4).

[257] We note that CAA section 114(c) explicitly excludes emissions data from treatment as confidential information.

[258] *Argus Leader,* 139 S. Ct. at 2366.

[259] *Id.* at 2363.

[260] *Id.* (internal citations omitted).

[261] *Id.* (internal citations omitted).

[262] ''Exemption 4 After the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media and Accompanying Step-by-Step Guide,'' Office of Information Policy, U.S. DOJ, (October 4, 2019), available at *https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media.*

[263] See *id.*; see also ''Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential under Exemption 4 of the FOIA,'' Office of Information Policy, U.S. DOJ, (updated October 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[264] See, *e.g.,* ''Clean Air Act Fuels Settlement Information,'' U.S. EPA, available at *https://www.epa.gov/enforcement/clean-air-act-fuels-settlement-information;* ''Civil Enforcement of the Renewable Fuel Standard Program,'' U.S. EPA, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.*

[265] EPA began posting RFS enforcement-related determinations and actions in 2013. See ''Civil Enforcement of the Renewable Fuel Standard Program,'' U.S. EPA, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.* EPA has been posting gasoline and diesel enforcement actions for much longer. See ''Clean Air Act Fuels Settlement Information,'' U.S. EPA, available at *https://www.epa.gov/enforcement/clean-air-act-fuels-settlement-information.*

total quantity of RINs in question, the batch number(s) and the D codes of the RINs in question, the time period when the RINs in question were generated or when the violation occurred, and any other information relevant to describing the violation at issue. Additionally, in response to a comment that EPA received on the NPRM, the information that EPA intends to continue to release in the context of these determinations and actions also includes information relating to an obligated party's failure to meet its RVOs. While we believe that this information is already included as information relating to the use of RINs or as any other information relevant to describing the violation at issue, we are explicitly including it in this determination for the avoidance of doubt and the sake of clarity. We are codifying this determination at 40 CFR 80.11 and 80.1402(b), as well as at 40 CFR 1090.15.

Publicly disclosing this information is important for providing transparency to stakeholders and the public with respect to violations of EPA's fuel quality and RFS programs and the relief EPA is seeking to remedy those violations through its enforcement actions. Public disclosure is also important to the successful operation and integrity of the RFS program as it may prevent parties from unwittingly transferring or attempting to use invalid RINs for compliance, in contravention of the RFS regulations, or from buying invalid RINs that they will be unable to use for compliance. For these reasons, we are providing an express indication through this final rule that such information is not entitled to confidential treatment.

2. Treatment of Information Contained in Requests Submitted Under the RFS Program

We are finalizing regulations that would help facilitate our processing of claims that RFS-related information should be withheld from public disclosure under FOIA, 5 U.S.C. 552(b)(4), as CBI. These regulations identify certain types of RFS information collected by EPA under 40 CFR part 80, subpart M, that EPA considers as not entitled to confidential treatment pursuant to Exemption 4 of the FOIA and that EPA may release without further notice.

These regulations provide an express indication that we will not consider certain basic information (identified below) incorporated into EPA actions on petitions and submissions, as well as that same information as it appears in the submissions to EPA under 40 CFR part 80, subpart M, to be entitled to confidential treatment under Exemption 4 of the FOIA. This determination will apply prospectively to submissions and requests under the RFS program received by EPA after publication of the final rule, and EPA's decisions on those submissions and requests. In particular, the provisions of 40 CFR 80.1402 will apply to all submissions to EPA under 40 CFR part 80, subpart M, including, but not limited to: SREs submitted under 40 CFR 80.1441, small refiner exemptions under 40 CFR 80.1442, pathway petitions under 40 CFR 80.1416, and compliance demonstration reports. Accordingly, such information will be released to a FOIA requester upon request without further notice to the submitter if no other FOIA exemption applies and without following EPA's procedures set forth in 40 CFR part 2, subpart B. EPA may also elect to proactively release the information without further notice to the submitter and without following EPA's procedures set forth in 40 CFR part 2, subpart B. We are codifying this determination at 40 CFR 80.1402(c) and (d).

Through this action, we are providing an express indication that such information is not entitled to confidential treatment and may be affirmatively disclosed to the public without providing further notice to affected businesses. This action effectively serves as an advance confidentiality determination through rulemaking covering the information identified below. Accordingly, the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply to the specified information submitted under this part that is determined through this rulemaking not to qualify for confidential treatment. In particular, the information affected by this action is the submitter's name, the name and location of the facility, the date the submission was transmitted to EPA, any EPA-issued company or facility identification numbers associated with the submission, the general nature or purpose of the submission, and the relevant time period for the submission as applicable. Additionally, for submissions making requests that EPA must adjudicate (*e.g.,* new pathway petitions, petitions for exemptions or compliance flexibility, etc.), under this action, once we have adjudicated the request, we may release the following information: the submitter's name; the name and location of the facility; the date the request was transmitted to EPA; any EPA-issued company or facility identification numbers associated with the request, the general nature or purpose of the request, the relevant time period for the request, the extent to which EPA either granted or denied the request (*i.e.,* whether EPA grants a request in part and the portions granted and denied, but not EPA's basis for the decision or any information that is not provided in 40 CFR 80.1402(d)), and any relevant terms and conditions. For information submitted under 40 CFR part 80, subpart M, and not specified in the regulations at 40 CFR 80.1402, EPA will continue to evaluate such CBI claims in accordance with 40 CFR part 2, subpart B.

It is appropriate to release the information described above in the interest of transparency and to provide the public with information about entities seeking exemptions or requests under part 80, subpart M. This approach will also provide certainty to submitters regarding the release of information under 40 CFR part 80, subpart M. With this advance notice, each submitter will have certainty regarding how EPA will treat the information specified above, and, as applicable, have the discretion to decide whether to make such a request with the understanding that EPA will release certain information about the request without further notice to the submitter.

E. Clarifying the Definition of ''Agricultural Digester''

We are finalizing as proposed our clarifying amendments for the definition of ''agricultural digester'' in 40 CFR 80.1401. Row Q in Table 1 to 40 CFR 80.1426 makes renewable compressed natural gas, renewable liquefied natural gas, and renewable electricity eligible to generate cellulosic biofuel (D3) RINs if the fuel is produced from, among other feedstocks, biogas from agricultural digesters (and if the producer meets all other applicable requirements under the RFS program). An agricultural digester was previously defined at 40 CFR 80.1401 as ''an anaerobic digester that processes predominantly cellulosic materials, including animal manure, crop residues, and/or separated yard waste.'' In the preamble to the Pathways II final rule, we explained that predominantly cellulosic materials are materials that are at least 75 percent cellulose, hemi-cellulose or lignin by mass.[266] In the proposed rule, we

[266] The Pathways II final rule contained a list of feedstocks EPA determined are ''predominately cellulosic feedstocks'': ''Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, Arundo donax, Pennisetum purpureum, and biogas from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters'' (79 FR 42130–31, July 18, 2014). EPA further determined that feedstocks with minimum average adjusted

Continued

proposed clarifying amendments to the definition of ''agricultural digester'' based on multiple questions we have received from stakeholders asking if they could generate D3 RINs for biogas produced in a digester if materials that are not predominantly cellulosic are used in the digester. We are finalizing revisions to the definition of agricultural digester to clarify that only animal manure, crop residues, and/or separated yard waste with an adjusted cellulosic content of at least 75 percent can be processed in such a digester, and that each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75 percent. This revision does not change our interpretation or implementation of the applicable requirements but will make it easier for the regulated community to understand the extant limitations on generating D3 RINs for biogas produced in agricultural digesters.

The preamble to the Pathways II rule makes it clear that the term ''predominantly cellulosic'' means that eligible feedstocks must contain a cellulosic content of at least 75 percent, and that this term does not authorize renewable fuel producers to introduce non-predominantly cellulosic materials into an agricultural digester. In the Pathways II rulemaking, we analyzed what we understood to be the most common inputs—animal manure, crop residues, and separated yard waste—and determined that all are predominantly cellulosic.[267] Consistent with this understanding and analysis, we narrowly defined ''agricultural digester'' based on use of these three feedstocks. Allowing other materials into the digester or any materials that are not at least 75 percent cellulosic would therefore be inconsistent with the analysis underlying the rule and the definition of agricultural digester.

In addition to maintaining consistency with the Pathways II analysis, limiting the feedstocks that can be used in an agricultural digester to animal manure, crop residue, and separated yard waste also makes implementation and oversight of pathways that include biogas from agricultural digesters much more straightforward. Specifically, because EPA has already determined that these three renewable biomass feedstocks are predominantly cellulosic, no further steps are needed to demonstrate that 100 percent of the fuel produced from a digester that is limited to animal manure, crop residue, and separated yard waste is eligible to generate cellulosic RINs. Our clarification of the definition of agricultural digester does not, however, mean that parties cannot generate D3 RINs for biogas produced from other feedstocks or in other types of digesters (*e.g.,* municipal wastewater treatment facility digesters, separated MSW digesters, or other waste digesters that convert the cellulosic components of biomass to biogas). The existing pathways allow D3 RINs to be generated for renewable compressed natural gas, renewable liquified natural gas, and renewable electricity produced from ''biogas from the cellulosic components of biomass processed in other waste digesters'' under Row Q of Table 1 to 40 CFR 80.1426. For example, if the only renewable biomass inputs to an ''other waste digester'' are all predominantly cellulosic, the resulting fuel would be eligible to generate 100 percent D3 RINs, even though the digester may not be an ''agricultural digester.'' If one or more of the inputs to an ''other waste digester'' are not predominantly cellulosic, the resulting fuel may be eligible to generate D3 RINs for only the portion of the fuel that was demonstrated to be produced from cellulosic biomass through proper testing and D5 RINs for the rest of the fuel produced (under the pathway contained in Row T) as specified at 40 CFR 80.1426(f)(15)(i)(B).

Thus, the ability to generate cellulosic RINs for 100 percent of the fuel produced under the pathway in row Q is predicated on the assumption and associated requirement that all the inputs to a digester are predominantly cellulosic. In order to maintain the streamlined approach to qualifying the output of an agricultural digester as 100 percent cellulosic, we are revising the definition to provide an exclusive list of the feedstocks that such digesters may process, as well as to clarify that each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75 percent. These revisions are consistent with the RFS regulations and the analyses undertaken for the Pathway II rule that formed the basis for the agricultural digester pathways. They are a clarification of the regulatory text, but not a change in our interpretation of our existing regulations or practice in implementing them. The revisions additionally clarify that a digester that processes a material that is less than 75 percent cellulosic content is not an agricultural digester, even if the total cellulosic content of all the processed materials taken together exceeds the 75 percent threshold.

F. Definition of ''Produced From Renewable Biomass''

We proposed to define, in 40 CFR 80.1401, that ''produced from renewable biomass'' means the energy in the finished fuel comes from renewable biomass. The purpose of this proposed definition was to provide additional clarity on what fuels qualify as renewable fuel, in alignment with the statutory and regulatory definition of renewable fuel and our pre-existing interpretation of the statute and regulations. The RFS regulations include formulas to determine the number of gallon-RINs generated for fuel that is produced by co-processing renewable biomass and non-renewable feedstocks simultaneously to produce a fuel based on the share of the feedstock energy that is from renewable biomass.[268] Thus, the proposed definition was intended merely to reinforce what the regulations at 40 CFR 80.1426(f)(4) already require—that the RIN generator must base the RINs generated for a renewable fuel on the energy coming from the renewable biomass used to produce the fuel.

We received many comments on this proposed definition. Given the breadth and depth of these comments, we require additional time to consider these comments and are not finalizing a definition of ''produced from renewable biomass'' in this rule. During the pendency of our consideration, we will continue to implement our long-standing interpretation of the existing requirements at 40 CFR 80.1426(f)(4) as described above.

G. Esterification Pathway

We are adding ''esterification'' as a production process in rows F and H of Table 1 to 40 CFR 80.1426. This addition makes biodiesel, renewable diesel, heating oil, or jet fuel produced from a qualifying renewable biomass feedstock through an esterification process eligible for BBD (D4) or advanced biofuel (D5) RINs. We expect this revision to primarily result in D4 RIN generation for biodiesel produced from FFA feedstock through an esterification process.[269]

In the 2020 proposed rule, we proposed to revise rows F and H of Table 1 to 40 CFR 80.1426 by changing the existing process ''Trans-

cellulosic content of 75 percent, measured on a dry mass basis, were ''predominantly cellulosic,'' meaning fuel produced from these feedstocks would be eligible to generate 100 percent cellulosic RINs.

[267] 79 FR 42128, 42140 (July 18, 2014).

[268] The regulations at 40 CFR 80.1426(f)(4) specifying that RIN generation is based on the feedstock energy of the renewable biomass were established in the March 2010 RFS2 final rule.

[269] FFA feedstock is a biointermediate, as discussed in Section VII.C.3.b.

Esterification'' to be ''Transesterification with or without esterification pretreatment'' and adding ''esterification'' as eligible production processes.[270] In the 2020 final rule, we added ''Transesterification with or without esterification pretreatment'' to rows F and H of Table 1 to 80.1426, but we did not add the standalone esterification pathway at that time, stating that the standalone esterification process, which uses FFA feedstocks, ''remains under consideration and may be finalized in a future action.'' [271]

In the 2020–2022 proposed rule, we indicated that if we finalized the biointermediate program and included FFA feedstocks in the definition of biointermediate, then we would also finalize the standalone esterification pathway previously proposed in the 2020 proposed rule.[272] This final rule includes FFA feedstocks as one of the biointermediates specifically included in the definition of biointermediate. Thus, as stated in the proposed rule, we are finalizing the standalone esterification pathway.

The most commonly used method to produce biodiesel is transesterification, which involves reacting triglycerides with methanol, typically under the presence of a base catalyst.[273] While the main component of renewable biomass feedstocks that are fats, oils, and greases is typically triglycerides, other components, such as FFA, can also exist. Removal or conversion of the FFA from the fat, oil, or grease is important where the traditional base-catalyzed transesterification production process is used because FFA will inhibit the transesterification reaction. Esterification can be used either as a pre-treatment step or as a direct standalone process to convert FFA feedstocks to biodiesel. When esterification is used as a pre-treatment step, the FFA is converted through acid esterification and then followed with the traditional base-catalyzed transesterification of triglycerides. When standalone esterification is used, the FFA feedstock is converted directly to biodiesel via acid esterification.

H. Technical Amendments

We are making numerous technical amendments to the RFS regulations. These amendments are being made to correct minor inaccuracies, clarify, and update the current regulations. These changes are described in Table VIII.H–1 below.

TABLE VIII.H–1—MISCELLANEOUS TECHNICAL AMENDMENTS TO RFS REGULATIONS

Part and section of title 40	Description of amendment
80.1401	Amended by revising the definition of ''Foreign renewable fuel producer'' to mirror the regional applicability requirement in § 80.1426(b)(1) and clarifying that foreign ethanol producers are considered foreign renewable fuel producers, consistent with this action's biointermediate provisions.
80.1401	Amended by revising the definition of ''Renewable fuel'' to reiterate that undenatured ethanol is not renewable fuel.
80.1401, 80.1426(f)(5)(i)–(iii), (f)(5)(iv)(A) and (B), and (f)(5)(v), 80.1450(b)(1)(vii)(A) and (B) and (b)(1)(viii), 80.1451(b)(1)(ii)(R), and 80.1454(j).	Amended by moving the definitions of ''Separated yard waste,'' ''Separated food waste,'' and ''Separated municipal solid waste'' from § 80.1426(f)(5) to the RFS definitions section (§ 80.1401) and updating associated cross-references.
80.1401, 80.1426(f)(17)(i), 80.1450(b)(1)(xii), 80.1451(b)(1)(ii)(T), 80.1454(l), and 80.1468(b).	Amended by updating the incorporation by reference (IBR) for ''Standard Specification for Diesel Fuel,'' ASTM D975–13a, to now be ASTM D975–21, which is the most recent ASTM version.
80.1401 and 80.1468(b)	Amended by updating the IBR for ''Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels,'' ASTM D6751–09, to now be ASTM D6751–20a, which is the most recent ASTM version.
80.1401 and 80.1471(c)	Amended by adding a definition of ''Professional liability insurance'' consistent with its definition in 31 CFR 50.5(q) and removing the previous cross-reference to this definition in § 80.1471(c).
80.1426(f)(7)(v)(A) and 80.1468(b).	Amended by updating the IBR for ''Standard Test Methods for Analysis of Wood Fuels,'' ASTM E870–82(2006), to now be ASTM E870–82(2019), which is the most recent ASTM version.
80.1426(f)(7)(v)(B) and 80.1468(b).	Amended by updating the IBR for ''Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials,'' ASTM D4442–07, to now be ASTM D4442–20, which is the most recent ASTM version.
80.1426(f)(7)(v)(B) and 80.1468(b).	Amended by updating the IBR for ''Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters,'' ASTM D4444–08, to now be ASTM D4444–13 (2018), which is the most recent ASTM version.
80.1426(f)(8)(ii)(B) and 80.1468(b).	Amended by updating the IBR for ''Standard Guide for the Use of the Joint American Petroleum Institute (API) and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API Manual of Petroleum Measurement Standards (MPMS) Chapter 11.1,'' ASTM D1250–08, to now be ASTM D1250–19e1, which is the most recent ASTM version.
80.1426(f)(9)(ii), 80.1430(e)(2), and 80.1468(b).	Amended by updating the IBR for ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' ASTM D6866–08, to now be ASTM D6866–22, which is the most recent ASTM version.
80.1426(f)(17)(i)	Amended by adding ''renewable gasoline,'' consistent with other related sections.
80.1426(f)(17)(i)(B)(*1*) and (*2*), 80.1450(b)(1)(xii)(B) and (C), 80.1451(b)(1)(ii)(T)(*1*), and 80.1454(l)(1).	Amended by replacing ''diesel'' with ''distillate'' to clarify that parties that blend renewable jet fuel with conventional jet fuel must currently comply with these requirements. This would remove perceived ambiguity over whether these provisions apply to producers of blended renewable jet fuel (jet fuel is not diesel fuel per the definition of ''diesel fuel'' at 40 CFR 80.2 but rather distillate fuel).

[270] 84 FR 36801 (July 29, 2019).

[271] 85 FR 7016, 7058 (February 6, 2020).

[272] 86 FR 72473 (December 21, 2021).

[273] Commonly used base catalysts include sodium hydroxide (NaOH), potassium hydroxide (KOH), and sodium methoxide ($NaOCH_3$).

TABLE VIII.H–1—MISCELLANEOUS TECHNICAL AMENDMENTS TO RFS REGULATIONS—Continued

Part and section of title 40	Description of amendment
80.1428(b)(2)	Amended to be consistent with the restriction that independent third-party auditors may not own RINs under § 80.1471(a)(3).
80.1429(b)(9)	Amended to limit the number of RINs that a party can separate when they incur an RVO due to redesignating certified-NTDF under § 80.1408. This is consistent with similar situations involving exporters of renewable fuel or importers of gasoline and diesel fuel.
80.1450(g)(11)(ii), 80.1473(f), 80.1474(b)(2) and (3), (b)(4)(i)(C), and (b)(4)(ii)(C).	Amended by updating the email address for EPA's EMTS help desk to *fuelsprogramsupport@epa.gov.*
80.1450(h)(2)(i)	Amended by changing the time for responding to EPA's notice of intent to deactivate a company's registration from 14 to 30 calendar days to allow additional time for company action.
80.1451(b)(1)(ii)(T)(*2*) and 80.1454(l)(3).	Amended to clarify reporting instructions and move the affidavit requirement from the reporting section (§ 80.1451) to the recordkeeping section (§ 80.1454).
80.1460(b)(6)	Amended to clarify that generating a RIN for fuel for which RINs have previously been generated is not a prohibited act if those RINs were generated pursuant to § 80.1426(c)(6).
80.1464(a)(3)(ii), (b)(3)(ii), and (c)(2)(ii).	Amended to modify the attest engagements requirements to be consistent with the RIN activity report requirements in § 80.1451(c)(2).
80.1464(a)(4)(ii), (b)(5)(ii), and (c)(3)(ii) and 80.1475(a)(2) and (d)(4).	Amended by updating outdated references to expired provisions of part 80 to part 1090.
80.1464(a)(7), (b)(8), (c)(7), (i)(1)(i), and (i)(2)(i).	Amended to add the requirement that the attest auditor verifies the submission of required compliance reports and states as a finding any compliance reports missing.
80.1464(b)(4)(i) and (iii)	Amended to modify the requirements to include verification of last date of independent third-party engineering review as occurring within the three-year cycle under § 80.1450(d)(3).
80.1469(c)(1)(vii)	Amended to modify the requirements for Quality Assurance Plans to allow for a renewable fuel for which RINs were previously generated to be used as a feedstock if done in accordance with § 80.1426(c)(6).
80.1471(c)	Amended to correct an erroneous reference to 31 CFR 50.5(q) to now be 31 CFR 50.4(t), and to allow comparable financial strength ratings if acceptable to EPA.
80.1475(d)(1) and (3)	Amended by correcting erroneous references to paragraph (b) to now be to paragraph (c).

IX. Statutory and Executive Order Reviews

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

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of potential costs and benefits associated with this action. This analysis is presented in the RIA, available in the docket for this action.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2691.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information to be collected is necessary to implement the inclusion of biointermediates to the RFS program. Biointermediate producers and importers will be added as respondents and certain existing respondents (*e.g.,* renewable fuel producers) may have additional reporting and recordkeeping requirements related to their use of biointermediates. Recordkeeping and reporting requirements include the registration of biointermediate producers and their facilities; product transfer documentation; records retention related to the production, transfer, and use of biointermediates; annual attest engagements; quality assurance plans for biointermediates; and the submission of information related to renewable fuels produced using biointermediates. These items are discussed in detail in the supporting statement in the docket.

Respondents/affected entities: Biointermediate producers, renewable fuel producers, biointermediate importers, and third parties who submit reports for these parties.

Respondent's obligation to respond: Mandatory, under 40 CFR parts 80 and 1090.

Estimated number of respondents: 5,052.

Frequency of response: On occasion, daily, quarterly, or annually.

Total estimated burden: 167,385 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $9,262,146 (per year), all of which is purchased services, and which includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, EPA will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if

the rule has no net burden on the small entities subject to the rule.

With respect to the biointermediate provisions, participation in the biointermediates program is purely voluntary. We do not believe that a small biointermediate producer or renewable fuel producer will choose to take advantage of the biointermediate program unless there is sufficient economic incentive for them to do so. Current small renewable fuel producers will not be compelled to use biointermediates, and as such, any costs associated with these provisions are also purely voluntary. Also, the biointermediates program will create new opportunities for small entities that may be able to build smaller operations than a full-scale renewable fuel production facility. These entities would likely not be able to otherwise participate in the RFS program. With respect to the other amendments to the RFS regulations, this action makes relatively minor corrections and modifications to those regulations. As such, we do not anticipate that there will be any significant adverse economic impact on directly regulated small entities as a result of these provisions.

The small entities directly regulated by the annual percentage standards associated with the RFS volumes are small refiners, which are defined at 13 CFR 121.201. With respect to the 2020, 2021, and 2022 percentage standards and 2022 supplemental standard, we have evaluated the impacts on small entities from two perspectives: as if the standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

To evaluate the impacts of the volume requirements on small entities, we have conducted a screening analysis [274] to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule will not be significant. We have reviewed and assessed the available information, which shows that obligated parties, including small entities, are able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[275] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs was not recovered by obligated parties, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards established in this action are far less than 1 percent of the value of their sales.[276]

While the screening analysis described above supports a certification that this rule will not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of our ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule, which was the rule that implemented the entire program as required by EISA 2007.[277] As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, we conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, we estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this final rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. The cellulosic biofuel, advanced biofuel, and total renewable fuel volumes remain significantly below the statutory volume targets analyzed in the RFS2 final rule. Compared to the burden that would be imposed under the volumes that we assessed in the screening analysis for the RFS2 final rule (*i.e.,* the volumes specified in the CAA), the volume requirements in this rule reduce burden on small entities. Regarding the BBD standard, it is a nested standard within the advanced biofuel category, and as discussed in Section III.F, the 2022 BBD volume requirement is below the volume of BBD that is anticipated to be produced and used to satisfy the advanced biofuel and total renewable fuel requirements. In other words, the volume of BBD actually used in 2022 will be driven not by the 2022 BBD standard, but rather by the 2022 advanced biofuel and total renewable fuel standards. The net result of the standards being promulgated in this action is a reduction in burden as compared to implementation of the statutory volume targets assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are existing compliance flexibilities in the program that small entities can take advantage of. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, provided that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

In sum, this final rule will not change the compliance flexibilities currently offered to small entities under the RFS program and available information shows that the impact on small entities

[274] See Chapter 11 of the RIA.

[275] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, November 2017; ''April 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–005, April 2022; ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

[276] A cost-to-sales ratio of 1 percent represents a typical agency threshold for determining the significance of the economic impact on small entities. See ''Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act,'' November 2006.

[277] 75 FR 14670 (March 26, 2010).

from implementation of this rule will not be significant when viewed either from the perspective of it being a standalone action or a part of the overall RFS program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o), and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)). While this action is not covered by Executive Order 13045, a discussion of environmental health impacts is included in Chapter 3 of the RIA.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2020, 2021, and 2022 pursuant to the CAA. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply by increasing energy independence and security.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. We are updating the existing test methods and standards in the RFS regulations to more recent versions. In accordance with the requirements of 1 CFR 51.5, we are incorporating by reference the use of test methods and standards from ASTM International. A detailed discussion of these test methods and standards can be found in Section VIII.H. The standards and test methods may be obtained through the ASTM International website (*www.astm.org*) or by calling ASTM International at (877) 909–2786. (In addition to the standards and test methods listed below, ASTM E711 is also referenced in the regulatory text of this final rule. It was approved for IBR as of July 1, 2010, and no changes are being finalized.)

TABLE IX.I–1—STANDARDS AND TEST METHODS TO BE INCORPORATED BY REFERENCE

Organization and standard or test method	Description
ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021.	Diesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019.	Standard guide used by industry for determining temperature corrected standardized volumes under the RFS program.
ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020.	Test method used for determining moisture content of wood samples that must be met when qualifying for RINs for renewable fuels.
ASTM D4444–13 (2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018.	Test method used for determining moisture content of wood samples that must be met when qualifying for RINs for renewable fuels.
ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020.	Biodiesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D6866–22, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved March 15, 2022.	Radiocarbon dating test method to determine the renewable content of transportation fuel.
ASTM E870–82 (2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019.	Test method that covers the proximate and ultimate analysis of wood fuels, as well as the determination of the gross caloric value of wood sampled and prepared by prescribed test methods and analyzed according to ASTM established procedures that must be met when qualifying for RINs for renewable fuels.

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

Due to time constraints and uncertainty about where impacts are likely to occur, EPA is able to evaluate only qualitatively the extent to which this action may result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). While there is the potential for GHG emission reductions as a result of this action, both positive and negative changes in air and water quality could also occur due to increases in biofuel production. Land use change to bring more corn, soy, or other crops into production in response to the action could also affect air, water, and soil quality in specific locations. These environmental changes, combined with future climate change impacts, may be unevenly distributed across geographies and thus affect different demographics, such as people of color, low income, or indigenous populations. Such effects are uncertain and challenging to predict on a granular spatial scale. A summary of our approach for considering potential EJ concerns as a result of this action can be found in Section I.J, and our EJ analysis (including a discussion of this action's potential impacts on GHGs, air quality, water quality, and fuel and food prices) can be found in Chapter 8 of the RIA, available in the docket for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Incorporation by reference, Oil imports, Petroleum, Renewable fuel.

40 CFR Part 1090

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 80 and 1090 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

■ 2. Add § 80.11 to read as follows:

§ 80.11 Confidentiality of information.

(a) Except as specified in paragraph (b) of this section, information obtained by the Administrator or his representatives pursuant to this part shall be treated, in so far as its confidentiality is concerned, in accordance with the provisions of 40 CFR part 2, subpart B.

(b) Information contained in EPA notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments is not entitled to confidential treatment and therefore EPA may publicly disclose such information. Such information includes the company name and EPA-issued company identification number, the facility name and EPA-issued facility identification number, the total quantity of fuel and parameter, the time or time period when the violation occurred, information relating to the generation, transfer, or use of credits, and any other information relevant to describing the violation.

Subpart M—Renewable Fuel Standard

■ 3. Amend § 80.1401 by:
■ a. Revising the definition of ''Agricultural digester'';
■ b. Adding in alphabetical order the definition of ''Approved pathway'';
■ c. Revising the definition of ''Baseline volume'';
■ d. Adding in alphabetical order the definition of ''Biocrude'';
■ e. Revising the definition of ''Biodiesel'';
■ f. Adding in alphabetical order the definitions of ''Biodiesel distillation bottoms'', ''Biointermediate'', ''Biointermediate import facility'', ''Biointermediate importer'', ''Biointermediate producer'', ''Biointermediate production facility'', and ''Biomass-based sugars'';
■ g. Revising the definitions of ''Combined heat and power (CHP)'' and ''Co-processed'';
■ h. Adding in alphabetical order the definition of ''Digestate'';
■ i. Revising the definitions ''Facility'' and ''Foreign renewable fuel producer'';
■ j. Adding in alphabetical order the definitions of ''Free fatty acid (FFA) feedstock'' and ''Glycerin'';
■ k. Revising paragraph (1) in the definition of ''Non-ester renewable diesel'' and the definition of ''Non-renewable feedstock'';
■ l. Adding in alphabetical order the definition of ''Professional liability insurance'';
■ m. Revising the definitions of ''Quality assurance audit'' and ''Quality assurance plan'', paragraph (7) in the definition of ''Renewable biomass'', and the introductory text and paragraph (1)(i) in the definition of ''Renewable fuel''; and
■ m. Adding in alphabetical order the definitions of ''Separated food waste'', ''Separated municipal solid waste (MSW)'', ''Separated yard waste'', ''Soapstock'', and ''Undenatured ethanol''.

The revisions and additions read as follows:

§ 80.1401 Definitions.

* * * * *

Agricultural digester means an anaerobic digester that processes only animal manure, crop residues, or separated yard waste with an adjusted cellulosic content of at least 75%. Each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75%.

* * * * *

Approved pathway means a pathway listed in Table 1 to § 80.1426 or in a petition approved under § 80.1416.

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity or nameplate capacity as applicable pursuant to § 80.1450(b)(1)(v)(A) through (C), of a specific renewable fuel production facility on a calendar year basis.

Biocrude means a liquid biointermediate that meets all the following requirements:

(1) It is produced at a biointermediate production facility using one or more of the following processes:

(i) A process identified in row M under Table 1 to § 80.1426.

(ii) A process identified in a pathway listed in a petition approved under § 80.1416 for the production of renewable fuel produced from biocrude.

(2) It is to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.

Biodiesel means a mono-alkyl ester that meets ASTM D6751 (incorporated by reference, see § 80.1468).

Biodiesel distillation bottoms means the heavier product from distillation at a biodiesel production facility that does not meet the definition of biodiesel.

* * * * *

Biointermediate means any feedstock material that is intended for use to produce renewable fuel and meets all of the following requirements:

(1) It is produced from renewable biomass.

(2) It has not previously had RINs generated for it.

(3) It is produced at a facility registered with EPA that is different than the facility at which it is used as feedstock material to produce renewable fuel.

(4) It is produced from the feedstock material identified in an approved pathway, will be used to produce the renewable fuel listed in that approved pathway, and is produced and processed in accordance with the process(es) listed in that approved pathway.

(5) Is one of the following types of biointermediate:

(i) Biocrude.

(ii) Biodiesel distillate bottoms.

(iii) Biomass-based sugars.

(iv) Digestate.

(v) Free fatty acid (FFA) feedstock.

(vi) Glycerin.

(vii) Soapstock.

(viii) Undenatured ethanol.

(6) It is not a feedstock material identified in an approved pathway that is used to produce the renewable fuel specified in that approved pathway.

Biointermediate import facility means any facility as defined in 40 CFR 1090.80 where a biointermediate is imported from outside the covered location into the covered location.

Biointermediate importer means any person who owns, leases, operates, controls, or supervises a biointermediate import facility.

Biointermediate producer means any person who owns, leases, operates, controls, or supervises a biointermediate production facility.

Biointermediate production facility means all of the activities and equipment associated with the production of a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end biointermediate product, which are located on one property, and are under the control of the same person (or persons under common control).

* * * * *

Biomass-based sugars means sugars (*e.g.,* dextrose, sucrose, etc.) extracted from renewable biomass under an approved pathway, other than through a form change described in § 80.1460(k)(2).

* * * * *

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in a biointermediate or renewable fuel production facility.

* * * * *

Co-processed means that renewable biomass or a biointermediate was simultaneously processed with fossil fuels or other non-renewable feedstock in the same unit or units to produce a fuel that is partially derived from renewable biomass or a biointermediate.

* * * * *

Digestate means the material that remains following the anaerobic digestion of renewable biomass in an anaerobic digester. Digestate must only contain the leftovers that were unable to be completely converted to biogas in an anaerobic digestor that is part of an EPA-accepted registration under § 80.1450.

* * * * *

Facility means all of the activities and equipment associated with the production of renewable fuel or a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end product, which are located on one property, and are under the control of the same person (or persons under common control).

* * * * *

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered locations who produces renewable fuel for use in transportation fuel, heating oil, or jet fuel for export to the covered location. Foreign ethanol producers are considered foreign renewable fuel producers.

* * * * *

Free fatty acid (FFA) feedstock means a biointermediate that is composed of at least 50 percent free fatty acids. FFA feedstock must not include any free fatty acids from the refining of crude palm oil.

* * * * *

Glycerin means a coproduct from the production of biodiesel that primarily contains glycerol.

* * * * *

Non-ester renewable diesel * * *

(1) A fuel or fuel additive that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468) and can be used in an engine designed to operate on conventional diesel fuel; or

* * * * *

Non-renewable feedstock means a feedstock (or any portion thereof) that does not meet the definition of renewable biomass or biointermediate in this section.

* * * * *

Professional liability insurance means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

* * * * *

Quality assurance audit means an audit of a renewable fuel production facility or biointermediate production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of §§ 80.1469, 80.1472, and 80.1477.

Quality assurance plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid or to verify the appropriate production of a biointermediate. A QAP includes both general and pathway specific elements.

* * * * *

Renewable biomass * * *

(7) Separated yard waste or food waste, including recycled cooking and trap grease.

* * * * *

Renewable fuel means a fuel that meets all the following requirements:

(1)(i) Fuel that is produced either from renewable biomass or from a biointermediate produced from renewable biomass.

* * * * *

Separated food waste means a feedstock stream consisting of food

waste kept separate since generation from other waste materials, and which includes food and beverage production waste and post-consumer food and beverage waste.

Separated municipal solid waste (MSW) means material remaining after separation actions have been taken to remove recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass from municipal solid waste, and which is composed of both cellulosic and non-cellulosic materials.

Separated yard waste means a feedstock stream consisting of yard waste kept separate since generation from other waste materials.

* * * * *

Soapstock means an emulsion, or the oil obtained from separation of that emulsion, produced by washing oils listed as a feedstock in an approved pathway with water.

* * * * *

Undenatured ethanol means a liquid that meets one of the definitions in paragraph (1) of this definition:

(1)(i) Ethanol that has not been denatured as required in 27 CFR parts 19 through 21.

(ii) Specially denatured alcohol as defined in 27 CFR 21.11.

(2) Undenatured ethanol is not renewable fuel.

* * * * *

■ 4. Revise § 80.1402 to read as follows:

§ 80.1402 Availability of information; confidentiality of information.

(a) Beginning January 1, 2020, no claim of business confidentiality may be asserted by any person with respect to information submitted to EPA under § 80.1451(c)(2)(ii)(E), whether submitted electronically or in paper format.

(b) The following information contained in EPA determinations that RINs are invalid under § 80.1474(b)(4)(i)(C)(*2*) and (b)(4)(ii)(C)(*2*), notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments arising under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) The company name.

(2) The name and location of the facility at which the fuel associated with the RINs in question was allegedly produced or imported.

(3) The EPA-issued company or facility identification number of the party that produced the fuel or generated the RINs in question.

(4) The total quantity of fuel and RINs in question.

(5) The time period when the fuel was allegedly produced.

(6) The time period when the RINs in question were generated.

(7) The batch number(s) and the D code(s) of the RINs in question.

(8) Information relating to the generation, transfer, or use of RINs.

(9) The shortfall in RINs related to an obligated party's failure to meet its renewable volume obligation.

(10) Any other information relevant to describing the violation.

(c) The following information contained in submissions under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the submission.

(5) The purpose of the submission.

(6) The relevant time period for the submission, if applicable.

(d) The following information incorporated into EPA determinations on submissions under this subpart is not entitled to confidential treatment and the provisions of 40 CFR 2.201 through 2.215 and 2.301 do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the submission.

(5) The purpose of the submission.

(6) The relevant time period of the submission, if applicable.

(7) The extent to which EPA granted or denied the request and any relevant terms and conditions.

(e) Except as otherwise specified in this section, any information submitted under this part claimed as confidential remains subject to evaluation by EPA under 40 CFR part 2, subpart B.

(f) EPA may disclose the information specified in paragraphs (a) through (d) of this section on its website, or otherwise make it available to interested parties, without additional notice or process, notwithstanding any claims that the information is entitled to confidential treatment under 40 CFR part 2, subpart B.

■ 5. Amend § 80.1405 by revising paragraph (a)(11) and adding paragraphs (a)(12) and (13) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(11) *Renewable Fuel Standards for 2020.* (i) The value of the cellulosic biofuel standard for 2020 shall be 0.32 percent.

(ii) The value of the biomass-based diesel standard for 2020 shall be 2.30 percent.

(iii) The value of the advanced biofuel standard for 2020 shall be 2.93 percent.

(iv) The value of the renewable fuel standard for 2020 shall be 10.82 percent.

(12) *Renewable Fuel Standards for 2021.* (i) The value of the cellulosic biofuel standard for 2021 shall be 0.33 percent.

(ii) The value of the biomass-based diesel standard for 2021 shall be 2.16 percent.

(iii) The value of the advanced biofuel standard for 2021 shall be 3.00 percent.

(iv) The value of the renewable fuel standard for 2021 shall be 11.19 percent.

(13) *Renewable Fuel Standards for 2022.* (i) The value of the cellulosic biofuel standard for 2022 shall be 0.35 percent.

(ii) The value of the biomass-based diesel standard for 2022 shall be 2.33 percent.

(iii) The value of the advanced biofuel standard for 2022 shall be 3.16 percent.

(iv) The value of the renewable fuel standard for 2022 shall be 11.59 percent.

(v) The value of the supplemental total renewable fuel standard for 2022 shall be 0.14 percent.

* * * * *

■ 6. Amend § 80.1407 by revising paragraph (f)(1) to read as follows:

§ 80.1407 How are the Renewable Volume Obligations calculated?

* * * * *

(f) * * *

(1) Any renewable fuel. Renewable fuel for which a RIN is invalidly generated under § 80.1431 may not be excluded from a party's renewable volume obligations.

* * * * *

§ 80.1408 [Amended]

■ 7. Amend § 80.1408(a)(2)(i)(B) and (a)(2)(ii)(B) by removing ''§ 80.1454(t)'' and adding ''§ 80.1454(o)'' in its place.

■ 8. Amend § 80.1415 by revising paragraphs (c)(2)(ii) and (iii) to read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(2) * * *

(ii) For each feedstock, biointermediate, component, or additive

that is used to make the renewable fuel, provide a description, the percent input, and identify whether or not it is renewable biomass or is derived from renewable biomass.

(iii) For each feedstock or biointermediate that also qualifies as a renewable fuel, state whether or not RINs have been previously generated for such feedstock.

* * * * *

■ 9. Amend § 80.1416 by revising paragraphs (b)(1)(ii) and (iii) to read as follows:

§ 80.1416 Petition process for evaluation of new renewable fuels pathways.

* * * * *

(b)(1) * * *

(ii) A technical justification that includes a description of the renewable fuel, feedstock(s), and biointermediate(s) used to make it, and the production process. The justification must include process modeling flow charts.

(iii) A mass balance for the pathway, including feedstocks and biointermediates, fuels produced, co-products, and waste materials production.

* * * * *

■ 10. Amend § 80.1426 by:
■ a. Adding paragraph (a)(4);
■ b. Removing the headings from paragraphs (c)(2) and (3);
■ c. Adding paragraph (c)(8);
■ d. Revising paragraph (f)(1);
■ e. Immediately following paragraph (f)(1), in table 1 to § 80.1426 revising entries F and H;
■ f. Revising paragraph (f)(3)(vi);
■ g. Revising the heading of paragraph (f)(4);
■ h. In paragraph (f)(4)(i)(A)(*1*), revising the definitions of ''FE_R'' and ''FE_{NR}'';
■ i. Adding paragraph (f)(4)(iv);
■ j. Revising and republishing paragraph (f)(5);
■ k. Revising paragraphs (f)(7)(v)(A) and (B), (f)(8)(ii)(B), (f)(9)(ii), (f)(15)(i) introductory text, and (f)(16)(iii);
■ l. Adding a heading to paragraph (f)(17);
■ m. Revising paragraphs (f)(17)(i) introductory text and (f)(17)(i)(B)(*1*) and (*2*).

The additions and revisions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(4) Where a feedstock or biointermediate is used to produce renewable fuel and is not entirely renewable biomass, RINs may only be generated for the portion of fuel that is derived from renewable biomass, as calculated under paragraph (f)(4) of this section.

* * * * *

(c) * * *

(8) RINs must not be generated for a biointermediate.

* * * * *

(f) * * *

(1) *Applicable pathways.* (i) D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, paragraph (f)(6) of this section, or as approved by the Administrator.

(ii) In choosing an appropriate D code, producers and importers may disregard any incidental, *de minimis* feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

(iii) Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

(iv) Pathways in Table 1 to this section and advanced technologies in Table 2 to this section also apply in cases where the renewable fuel producer is using a biointermediate.

(v) For the purposes of identifying the appropriate pathway in Table 1 to this section, biointermediates used for the production of renewable fuel are considered to be equivalent to the renewable biomass from which they were derived, with the following exceptions:

(A) Oil that is physically separated from any woody or herbaceous biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(B) Sugar or starch that is physically separated from cellulosic biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(vi) If a renewable fuel producer uses a biointermediate for the production of renewable fuel, additional requirements apply to both the renewable fuel producer and the biointermediate producer as described in § 80.1476.

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-code
* *	*	* *	*	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
* *	*	* *	*	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, Esterification, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
* *	*	* *	*	*

* * * * *

(3) * * *

(vi)(A) If a producer produces a single type of renewable fuel using two or more different feedstocks or biointermediates which are processed simultaneously, and each batch is comprised of a single type of fuel, then the number of gallon-RINs that shall be generated for a batch of renewable fuel and assigned a particular D code shall be determined according to the formulas in Table 4 to this section.

Table 4 to §80.1426—Number of Gallon-RINs to Assign to Batch-RINs With D Codes Dependent on Feedstock

D Code to Use in Batch-RIN	Number of Gallon-RINs
D = 3	$V_{RIN,CB} = EV * V_S * \frac{FE_3}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 4	$V_{RIN,BBD} = EV * V_S * \frac{FE_4}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 5	$V_{RIN,AB} = EV * V_S * \frac{FE_5}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 6	$V_{RIN,RF} = EV * V_S * \frac{FE_6}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$
D = 7	$V_{RIN,CD} = EV * V_S * \frac{FE_7}{FE_3 + FE_4 + FE_5 + FE_6 + FE_7}$

Where:

$V_{RIN,CB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of cellulosic biofuel with a D code of 3.

$V_{RIN,BBD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of biomass-based diesel with a D code of 4.

$V_{RIN,AB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of advanced biofuel with a D code of 5.

$V_{RIN,RF}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of renewable fuel with a D code of 6.

$V_{RIN,CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of cellulosic diesel with a D code of 7.

EV = Equivalence value for the renewable fuel per § 80.1415.

V_S = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

FE_3 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 3 under an approved pathway, in Btu.

FE_4 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 4 under an approved pathway, in Btu.

FE_5 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 5 under an approved pathway, in Btu.

FE_6 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 6 under an approved pathway, in Btu.

FE_7 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 7 under an approved pathway, in Btu.

(B) Feedstock energy values, FE, shall be calculated according to the following formula:

$FE = M * (1 - m) * CF * E$

Where:

FE = Feedstock or biointermediate energy, in Btu.

M = Mass of feedstock or biointermediate, in pounds, measured on a daily or per-batch basis.

m = Average moisture content of the feedstock or biointermediate, in mass percent.

CF = Converted Fraction in annual average mass percent, except as otherwise provided by § 80.1451(b)(1)(ii)(U), representing that portion of the feedstock or biointermediate that is converted into renewable fuel by the producer.

E = Energy content of the components of the feedstock or biointermediate that are converted to renewable fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

(4) *Renewable fuel that is produced by co-processing renewable biomass (including a biointermediate) and non-renewable feedstocks simultaneously to produce a fuel that is partially renewable.* (i) * * *

(A) * * *

(*1*) * * *

FE_R = Feedstock energy from renewable biomass (including the renewable portion of a biointermediate) used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks (including the non-renewable portion of a biointermediate) used to make the transportation fuel, heating oil, or jet fuel, in Btu.

* * * * *

(iv) RIN-generating parties must calculate RIN volume V_{RIN} for co-processed fuels produced from a biointermediate as described in paragraph (f)(4)(i)(B) of this section and calculate the renewable fraction of a fuel R using one of the following:

(A) Method B of ASTM D6866 (incorporated by reference, see § 80.1468) as described in paragraph (f)(9)(ii) of this section.

(B) If the renewable content of the co-processed fuel is 10 percent or greater, Method C of ASTM D6866 as described in paragraph (f)(9)(ii) of this section.

(C) Any other EPA-approved method under paragraph (f)(9)(ii) of this section.

(5) *Renewable fuel produced from separated yard waste, separated food waste, and separated MSW.* (i)(A) Separated yard waste is deemed to be composed entirely of cellulosic materials.

(B) Separated food waste is deemed to be composed entirely of non-cellulosic materials, unless a party demonstrates that a portion of the feedstock is cellulosic through approval of their facility registration.

(ii)(A) A feedstock qualifies as separated yard waste or separated food waste only if it is collected according to a plan submitted to and accepted by EPA under the registration procedures specified in § 80.1450(b)(1)(vii).

(B) A feedstock qualifies as separated MSW only if it is collected according to a plan submitted to and approved by EPA.

(iii) Separation and recycling actions for separated MSW are considered to occur if:

(A) Recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass that can be recycled are separated and removed from the municipal solid waste stream to the extent reasonably practicable according to a plan submitted to and approved by U.S. EPA under the registration procedures specified in § 80.1450(b)(1)(viii); and

(B) The fuel producer has evidence of all contracts relating to the disposition of paper, cardboard, plastics, rubber, textiles, metals, and glass that are recycled.

(iv)(A) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated yard waste shall be equal to a volume V_{RIN} and is calculated according to the following formula:

$V_{RIN} = EV * V_S$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

Vs = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

(B) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated food waste shall be equal to a volume V_{RIN} and is calculated according to the following formula:

$V_{RIN} = EV * V_S$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic or advanced biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

V_S = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

(v) The number of cellulosic biofuel gallon-RINs that shall be generated for the cellulosic portion of a batch of renewable fuel derived from separated MSW shall be determined according to the following formula:

$V_{RIN} = EV * V_S * R$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of cellulosic biofuel gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

V_S = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

R = The calculated non-fossil fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section, except that for biogas-derived fuels made from separated MSW, no testing is required and R = 1.

* * * * *

(7) * * *

(v) * * *

(A) ASTM E870 or ASTM E711 for gross calorific value (both incorporated by reference, see § 80.1468).

(B) ASTM D4442 or ASTM D4444 for moisture content (both incorporated by reference, see § 80.1468).

* * * * *

(8) * * *

(ii) * * *

(B) The standardized volume of biodiesel at 60 °F, in gallons, as calculated from the use of the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM D1250 (incorporated by reference, see § 80.1468).

* * * * *

(9) * * *

(ii) Parties must use Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by EPA.

* * * * *

(15) * * *

(i) If a producer seeking to generate D code 3 or D code 7 RINs produces a single type of renewable fuel using two or more feedstocks or biointermediates converted simultaneously, and at least one of the feedstocks or biointermediates does not have a minimum 75% average adjusted cellulosic content, one of the following additional requirements apply:

* * * * *

(16) * * *

(iii) Recordkeeping requirements under § 80.1454(n).

(17) *Qualifying use demonstration for certain renewable fuels.* (i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, renewable gasoline, or renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468) is considered renewable fuel and the producer or importer may generate RINs for such fuel only if all of the following apply:

* * * * *

(B) * * *

(*1*) Blending the renewable fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(*2*) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party must blend the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

* * * * *

■ 11. Amend § 80.1428 by revising paragraph (b)(2) to read as follows:

§ 80.1428 General requirements for RIN distribution.

* * * * *

(b) * * *

(2) Unless otherwise specified, any person that has registered pursuant to § 80.1450 can own a separated RIN.

* * * * *

■ 12. Amend § 80.1429 by revising paragraph (b)(9) introductory text to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(9) Except as provided in paragraphs (b)(2) through (5) and (8) of this section, parties whose non-export renewable volume obligations are solely related to the importation of products listed in § 80.1407(c) or (e), the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, or BOB, or that incur a renewable volume obligation (RVO) under § 80.1408, can only separate RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year is less than or equal to a limit set as follows:

* * * * *

■ 13. Amend § 80.1430 by revising paragraph (e)(2) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

* * * * *

(e) * * *

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA.

* * * * *

■ 14. Amend § 80.1431 by adding paragraph (a)(3) to read as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(3) If any RIN generated for a batch of renewable fuel produced using a biointermediate is invalid, then all RINs generated for that batch of renewable fuel are deemed invalid, unless EPA in its sole discretion determines that some portion of those RINs are valid.

* * * * *

§ 80.1435 [Amended]

■ 15. Amend § 80.1435(a)(4) by removing ''§ 80.1454(u)'' and adding ''§ 80.1454(p)'' in its place.

■ 16. Amend § 80.1449 by revising paragraph (a)(4)(iii) to read as follows:

§ 80.1449 What are the Production Outlook Report requirements?

(a) * * *

(4) * * *

(iii) Feedstocks, biointermediates, and production processes to be used at each production facility.

* * * * *

■ 17. Amend § 80.1450 by:

■ a. Revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(1)(i), and (b)(1)(ii) introductory text;

■ b. Adding paragraph (b)(1)(ii)(B);

■ c. Revising paragraphs (b)(1)(iii), (b)(1)(iv)(A)(*1*) and (*2*), (b)(1)(iv)(B)(*3*), (b)(1)(v)(B) and (C), (b)(1)(vii)(A) introductory text, (b)(1)(vii)(B) introductory text, (b)(1)(viii) introductory text, (b)(1)(viii)(B)(*1*) through (*3*), (b)(1)(xii) introductory text, (b)(1)(xii)(B), (b)(1)(xii)(C) introductory text, (b)(1)(xiii)(A), (b)(1)(xiii)(B) introductory text, (b)(1)(xiii)(B)(*1*) and (*5*), and (b)(1)(xv) introductory text;

■ d. Adding paragraph (b)(1)(xvi);

■ e. Revising paragraphs (b)(2)(i)(A) and (B), (b)(2)(ii)(A) through (C), (b)(2)(iv), and (d);

■ f. Adding a heading to paragraph (g); and

■ g. Revising the second sentence of paragraph (g) introductory text, paragraphs (g)(5) through (7) and (9) and (g)(10)(ii), the second sentence of paragraph (g)(11)(ii), (h)(1)(i), and the last sentence of paragraph (h)(2)(i).

The revisions and additions read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) *Producers.* Any RIN-generating foreign producer, any non-RIN-generating foreign producer, any domestic renewable fuel producer that generates RINs, or any biointermediate producer that transfers any biointermediate for the production of a renewable fuel for RIN generation, must provide EPA the information specified under 40 CFR 1090.805 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol, or prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Unless otherwise specifically indicated, all the following registration information must be submitted to EPA at least 60 days prior to the intended generation of RINs or the intended transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Renewable fuel producers may generate RINs for a renewable fuel under this part after EPA has accepted their registration and they have met all other applicable requirements under this part.

(1) A description of the types of renewable fuels, ethanol, or biointermediates that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel, ethanol, or biointermediate the renewable fuel producer or foreign ethanol producer must also provide all the following:

(i)(A) A list of all the feedstocks and biointermediates the facility intends to utilize without significant modification to the existing facility.

(B) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate, if applicable.

(C) A list of the EPA-issued company and facility registration numbers of all biointermediate producers and biointermediate production facilities that will supply biointermediates for renewable fuel production.

(ii) A description of the facility's renewable fuel, ethanol, or biointermediate production processes, including:

* * * * *

(B) For registrations indicating the production of any biointermediate, the biointermediate producer must provide all of the following:

(*1*) For each biointermediate production facility, the company name, EPA company registration number, and EPA facility registration number of the renewable fuel producer and renewable fuel production facility at which the biointermediate produced from the biointermediate production facility will be transferred and used.

(*2*) Copies of documents and corresponding calculations demonstrating production capacity of each biointermediate produced at the biointermediate production facility.

(*3*) For each type of feedstock that the biointermediate producer intends to process the biointermediate producer must provide all the following:

(*i*) A list of all the feedstocks the facility intends to utilize without significant modification to the existing facility.

(*ii*) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate.

(*4*) The approved pathway(s) that the biointermediate could be used in to produce renewable fuel.

(iii) The type(s) of co-products produced with each type of renewable fuel, ethanol, or biointermediate.

(iv) * * *

(A) * * *

(*1*) Each type of process heat fuel used at the facility to produce the renewable fuel, ethanol, or biointermediate.

(*2*) The name and address of the company supplying each process heat fuel to the renewable fuel facility, foreign ethanol facility, or biointermediate production facility.

(B) * * *

(*3*) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer, foreign ethanol producer, or biointermediate producer, and the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer.

(v) * * *

(B) For facilities claiming the exemption described in § 80.1403(c) or (d):

(*1*) Applicable air permits issued by EPA, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

(*i*) Issued or revised no later than December 19, 2007, for facilities described in § 80.1403(c); or

(*ii*) Issued or revised no later than December 31, 2009, for facilities described in § 80.1403(d).

(*2*) If the air permits specified in paragraph (b)(1)(v)(B)(*1*) of this section do not specify the maximum rated annual volume output of renewable fuel, copies of documents demonstrating the facility's actual peak capacity.

(C) For facilities not claiming the exemption described in § 80.1403(c) or (d) and that are exempt from air permit requirements or for which the maximum rated annual volume output of renewable fuel is not specified in their air permits, appropriate documentation demonstrating the facility's actual peak capacity or nameplate capacity.

* * * * *

(vii)(A) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated yard waste:

* * * * *

(B) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated food waste:

* * * * *

(viii) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated municipal solid waste:

* * * * *

(B) * * *

(*1*) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer, foreign ethanol producer, or biointermediate producer;

(*2*) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the fuel producer, foreign ethanol producer, or biointermediate producer; and

(*3*) Identification of the technology or practices selected for implementation by the fuel producer, foreign ethanol producer, or biointermediate producer including an explanation for such selection, and reasons why other technologies or practices were not.

* * * * *

(xii) For a producer or importer of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas, or renewable electricity, all the following:

* * * * *

(B) A statement regarding whether the renewable fuel producer or importer will blend the renewable fuel into gasoline or diesel fuel or enter into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(C) If the renewable fuel producer or importer enters into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel, provide all the following:

* * * * *

(xiii)(A) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% average adjusted cellulosic content, and who uses only a thermochemical process to convert feedstock into renewable fuel, must provide all the following:

(*1*) Data showing the average adjusted cellulosic content of the feedstock(s) to be used to produce fuel or biointermediate, based on the average of at least three representative samples. Cellulosic content data must come from an analytical method certified by a voluntary consensus standards body or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration. Samples must be of representative feedstock from the primary feedstock supplier that will provide the renewable fuel or biointermediate producer with feedstock subsequent to registration.

(*2*) For renewable fuel and biointermediate producers who want to use a new feedstock(s) after initial registration, updates to their registration under paragraph (d) of this section indicating the average adjusted cellulosic content of the new feedstock.

(*3*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using only a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(A) shall be provided at the next required registration update under paragraph (d) of this section.

(B) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, and who uses a process other than a thermochemical process or a combination of processes to convert feedstock into renewable fuel or biointermediate, must provide all the following:

(*1*) The expected overall fuel or biointermediate yield, calculated as the total volume of fuel produced per batch (*e.g.,* cellulosic biofuel plus all other fuel) divided by the total feedstock mass per batch on a dry weight basis (*e.g.,* cellulosic feedstock plus all other feedstocks).

* * * * *

(*5*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using a combination of processes or a process other than a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(B) shall be provided at the next required registration update under paragraph (d) of this section.

* * * * *

(xv) For a producer of cellulosic biofuel made from crop residue, a

foreign ethanol producer making ethanol from crop residue and seeking to have it sold after denaturing as cellulosic biofuel, or a biointermediate producer producing a biointermediate for use in the production of a cellulosic biofuel made from crop residue, provide all the following information:

* * * * *

(xvi) For FFA feedstock, the biointermediate producer must provide a description of how the biointermediate producer will determine FFA concentration.

(2) * * *

(i) * * *

(A) For a domestic renewable fuel production facility, a foreign ethanol production facility, or a biointermediate production facility, a professional engineer who is licensed by an appropriate state agency in the United States, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel or foreign biointermediate production facility, an engineer who is a foreign equivalent to a professional engineer licensed in the United States with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) * * *

(A) The third-party shall not be operated by the renewable fuel producer, foreign ethanol producer, or biointermediate producer, or any subsidiary or employee of the renewable fuel producer foreign ethanol producer, or biointermediate producer.

(B) The third-party shall be free from any interest in the renewable fuel producer, foreign ethanol producer, or biointermediate producer's business.

(C) The renewable fuel producer, foreign ethanol producer, or biointermediate producer shall be free from any interest in the third-party's business.

* * * * *

(iv) The renewable fuel producer, foreign ethanol producer, or biointermediate producer must retain records of the review and verification, as required in § 80.1454(b)(6) or (i)(4), as applicable.

* * * * *

(d) *Registration updates.* (1)(i)(A) Any renewable fuel producer or any foreign ethanol producer that makes changes to their facility that will allow them to produce renewable fuel or use a biointermediate that is not reflected in the producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel.

(B) Any biointermediate producer who makes changes to their biointermediate production facility that will allow them to produce a biointermediate for use in the production of a renewable fuel that is not reflected in the biointermediate producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new biointermediate for use in the production of the renewable fuel.

(ii) The renewable fuel producer, foreign ethanol producer, or biointermediate producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2)(i) Any renewable fuel producer or any foreign ethanol producer that makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update their registration information 7 days prior to the change.

(ii)(A) Any biointermediate producer that makes any other changes to a biointermediate production facility that will affect the biointermediate producer's registration must update their registration information 7 days prior to the change.

(B)(*1*) Any biointermediate producer that intends to change the designated renewable fuel production facility under paragraph (b)(1)(ii)(B)(*1*) of this section for one of its biointermediate production facilities must update their registration information with EPA at least 30 days prior to transferring the biointermediate to the newly designated renewable fuel production facility.

(*2*) A biointermediate producer may only change the designated renewable fuel production facility under paragraph (b)(1)(ii)(B)(*1*) of this section for each biointermediate production facility one time per calendar year unless EPA, in its sole discretion, allows the biointermediate producer to change the designated renewable fuel production facility more frequently.

(3) All renewable fuel producers, foreign ethanol producers, and biointermediate producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (ii) of this section, and include the information specified in paragraph (d)(3)(iii) or (iv) of this section, as applicable:

(i) For all renewable fuel producers and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all renewable fuel producers, foreign ethanol producers, and biointermediate producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) For all renewable fuel producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(iv) For biointermediate producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the biointermediate producer's calculations used to determine the renewable biomass and cellulosic renewable biomass proportions, as required to be reported to EPA under § 80.1451(j), of a representative sample of batches of each type of biointermediate produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

* * * * *

(g) *Independent third-party auditors.* * * * Registration information must be submitted at least 30 days prior to conducting audits of renewable fuel production or biointermediate production facilities. * * *

* * * * *

(5) *List of audited producers.* Name, address, and company and facility identification numbers of all renewable fuel production or biointermediate production facilities that the independent third-party auditor intends to audit under § 80.1472.

(6) *Audited producer associations.* An affidavit, or electronic consent, from each renewable fuel producer, foreign renewable fuel producer, or biointermediate producer stating its intent to have the independent third-party auditor conduct a quality assurance audit of any of the renewable fuel producer's or foreign renewable fuel producer's facilities.

(7) *Independence affidavits.* An affidavit stating that an independent third-party auditor and its contractors and subcontractors are independent, as described in § 80.1471(b), of any renewable fuel producer, foreign renewable fuel producer, or biointermediate producer.

* * * * *

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production or biointermediate production facilities that is not reflected in the independent third-party auditor's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to auditing new renewable fuel production or biointermediate production facilities.

(ii) Any independent third-party auditor who makes any changes other than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by a renewable fuel or biointermediate production facility, respectively, for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by any renewable fuel or biointermediate production facility not identified in the independent third-party auditor's existing registration.

(10) * * *

(ii) The independent third-party auditor submits an affidavit affirming that he or she has only verified RINs and biointermediates using a QAP approved under § 80.1469, notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d), and fulfilled all of his or her RIN replacement obligations under § 80.1474.

* * * * *

(11) * * *

(ii) * * * Communications should be sent to the EMTS support line (*fuelsprogramsupport@epa.gov*). * * *

* * * * *

(h) * * *

(1) * * *

(i) Unless the party is a biointermediate producer, the party has reported no activity in EMTS for twenty-four consecutive months.

* * * * *

(2) * * *

(i) * * * The party will have 30 calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

* * * * *

■ 18. Amend § 80.1451 by:

■ a. Revising paragraphs (b)(1)(ii)(K) and (L), the first sentence of paragraph (b)(1)(ii)(R), (b)(1)(ii)(T), (b)(1)(ii)(U) introductory text, (g)(1)(i), (g)(1)(ii) introductory text, (g)(1)(ii)(A) through (C), (K), and (L), and (g)(2)(vii) and (viii);

■ b. Redesignating paragraph (g)(2)(x) as paragraph (g)(2)(xi) and adding a new paragraph (g)(2)(x); and

■ c. Redesignating paragraphs (j) and (k) as paragraphs (k) and (l) and adding a new paragraph (j).

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(K) The types and quantities of feedstocks and biointermediates used.

(L) The process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process, feedstock, and biointermediate.

* * * * *

(R) Producers or importers of renewable fuel made from separated municipal solid waste must report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. * * *

* * * * *

(T) Producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas or renewable electricity, must report, on a quarterly basis, all the following for each volume of fuel:

(*1*) Total volume of renewable fuel produced or imported, total volume of renewable fuel blended into gasoline and distillate fuel by the producer or importer, and the percentage of renewable fuel in each batch of finished fuel.

(*2*) If the producer or importer generates RINs under § 80.1426(f)(17)(i)(B)(*2*), report the name, location, and contract information for each party that purchased the renewable fuel.

(U) Producers generating D code 3 or D code 7 RINs for fuel derived from feedstocks or biointermediates other than biogas (including through pathways listed in rows K, L, M, and N of Table 1 to § 80.1426), and that was produced from two or more feedstocks converted simultaneously, at least one of which has less than 75% average adjusted cellulosic content, and using a combination of processes or a process other than a thermochemical process or a combination of processes shall report all of the following:

* * * * *

(g) * * *

(1)(i) RIN and biointermediate verification reports for each renewable fuel or biointermediate production facility audited by the independent third-party auditor shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN and biointermediate verification reports shall include all the following information for each batch of renewable fuel produced or imported verified per § 80.1469(c), where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator or biointermediate producer's name.

(B) The RIN generator or biointermediate producer's EPA company registration number.

(C) The renewable fuel or biointermediate producer's EPA facility registration number.

* * * * *

(K) The volume and type of each feedstock and biointermediate used to produce the verified batch.

(L) Whether the feedstocks and biointermediates used to produce each verified batch met the definition of renewable biomass.

* * * * *

(2) * * *

(vii) A list of all renewable fuel and biointermediate facilities including the EPA's company and facility registration numbers audited under an approved quality assurance plan under § 80.1469 along with the date the independent third-party auditor conducted the on-site visit and audit.

(viii) Mass and energy balances calculated for each renewable fuel and biointermediate production facility audited under an approved quality assurance plan under § 80.1469.

* * * * *

(x) A list of all biointermediates that were identified as potentially improperly produced biointermediates under § 80.1477(d).

* * * * *

(j) *Biointermediate producers.* For each biointermediate production facility, any biointermediate producer must submit quarterly reports for biointermediate batch production to EPA containing all of the information in this paragraph (j).

(1) Include all the following information for each batch of biointermediate produced:

(i) The biointermediate producer's name.

(ii) The biointermediate producer's EPA company registration number.

(iii) The biointermediate producer's EPA facility registration number.

(iv) The applicable compliance period.

(v) The production date.

(vi) The batch number.

(vii) For batches of biointermediates intended for use to produce cellulosic biofuels, the adjusted cellulosic content of each batch and certification that the cellulosic content of each batch was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.

(viii) The volume of each batch produced.

(ix) The types and quantities of feedstocks used.

(x) The renewable fuel type(s) each batch of biointermediate was designated to be used as a feedstock material for.

(xi) The EPA company registration number and EPA facility registration number for each renewable fuel producer or foreign renewable fuel producer that received each batch.

(xii) The percentage of each batch of biointermediate that met the definition of renewable biomass and certification that this portion of the batch of biointermediate was derived from renewable biomass.

(xiii) The process(es) and feedstock(s) used and proportion of biointermediate volume attributable to each process and feedstock.

(xiv) The type of co-products produced with each batch.

(xv) The quantity of co-products produced in each quarter.

(xvi) Any additional information the Administrator may require.

(2) Quarterly reports under this paragraph (j) must be submitted according to the schedule in paragraph (f)(2) of this section.

* * * * *

■ 19. Amend § 80.1452 by redesignating paragraph (b)(16) as paragraph (b)(18) and adding new paragraphs (b)(16) and (17) to read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) * * *

(16) The type and quantity of each biointermediate used for the batch, if applicable.

(17) The EPA facility registration number of each biointermediate production facility at which a biointermediate used for the batch was produced, if applicable.

* * * * *

■ 20. Amend § 80.1453 by adding paragraph (f) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

* * * * *

(f)(1) On each occasion when any party transfers title or custody of a biointermediate, the transferor must provide to the transferee documents that include all of the following information:

(i) The name and address of the transferor and transferee.

(ii) The transferor's and transferee's EPA company registration and applicable facility registration numbers.

(iii) The volume of biointermediate that is being transferred.

(iv) The date of the transfer.

(v) The location of the biointermediate at the time of the transfer.

(vi) The following statement designating the volume of biointermediate as feedstock for the production of a renewable fuel: ''This volume is designated and intended for use as biointermediate in the production of renewable fuel as defined in 40 CFR 80.1401. Parties may not generate RINs on this feedstock material and it must remain segregated from all products until received by a designated renewable fuel production facility.''

(2) In addition to the information specified in paragraph (f)(1) of this section, on each occasion when any party transfers title of a biointermediate or when any party transfers a biointermediate to a renewable fuel production facility, the transferor must provide to the transferee documents that include all of the following information:

(i) The renewable fuel type the biointermediate was designated to be used as a feedstock material for by the biointermediate producer under § 80.1476(i).

(ii) The composition of the biointermediate being transferred, including:

(A) The type and quantity of each feedstock that was used to make the biointermediate.

(B) The percentage of each feedstock that is renewable biomass, rounded to two decimal places.

(C) For a biointermediate that contains both renewable and non-renewable feedstocks:

(*1*) The percentage of each feedstock that is not renewable biomass, rounded to two decimal places.

(*2*) The feedstock energy from the renewable biomass used to make the biointermediate, in Btu.

(*3*) The feedstock energy from the non-renewable biomass used to make the biointermediate, in Btu.

(*4*) The total percentage of the biointermediate that may generate RINs, rounded to two decimal places.

(*5*) The total percentage of the biointermediate that may not generate RINs, rounded to two decimal places.

(D) For a biointermediate that contains cellulosic material:

(*1*) The percentage of each feedstock that is cellulosic, rounded to two decimal places.

(*2*) The percentage of each feedstock that is non-cellulosic, rounded to two decimal places, if applicable.

(*3*) If the biointermediate is intended for use in the production of a cellulosic biofuel, the total percentage of the biointermediate that may generate cellulosic RINs, rounded to two decimal places.

(*4*) For separated municipal solid waste, the cellulosic portion of the biointermediate is equivalent to the biogenic portion.

(*5*) For separated food waste, the non-cellulosic percentage is assumed to be zero percent unless it is demonstrated to be partially cellulosic.

(*6*) For separated yard waste, 100% of separated yard waste is deemed to be cellulosic.

(*7*) The following statement: ''I certify that the cellulosic content of this feedstock was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.''

(iii) Copies of records specified in § 80.1454(i)(3), (5), and (6) for the volume being transferred, as applicable.

■ 21. Amend § 80.1454 by:

■ a. Redesignating paragraphs (b)(3)(vii) through (xii) as paragraphs (b)(3)(viii) through (xiii), respectively, and adding a new paragraph (b)(3)(vii);

■ b. Revising paragraph (b)(6), the first sentence of paragraph (d)(4), and paragraphs (i) and (j) introductory text;

■ c. Adding a heading to paragraph (k);

■ d. Revising paragraphs (l) introductory text and (l)(1);

■ e. Redesignating paragraph (l)(3) as paragraph (l)(4) and adding a new paragraph (l)(3);

■ f. Revising the first sentence of paragraph (m) introductory text;

■ g. Redesignating paragraph (m)(10) as paragraph (m)(11) and adding a new paragraph (m)(10);

■ h. Removing paragraphs (n) through (q);

■ i. Redesignating paragraphs (s) through (v) as paragraphs (n) through (q);

■ j. Revising newly redesignated paragraph (n) introductory text;

■ k. Revising paragraph (r);

■ l. Adding new paragraphs (s) through (v); and

■ m. Removing paragraph (w).

The revisions and additions read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(3) * * *

(vii) Type and quantity of biointermediates used.

* * * * *

(6) Copies of registration documents required under § 80.1450, including information on fuels and products, feedstocks, biointermediates, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review report submitted to EPA per § 80.1450(b)(2).

* * * * *

(d) * * *

(4) Domestic producers of renewable fuel or biointermediates made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass, describing the feedstock. * * *

* * * * *

(i) *Requirements for biointermediate producers.* In addition to any other applicable records a biointermediate producer must maintain under this section, any biointermediate producer producing a biointermediate must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453(f) and associated with the biointermediate producer's activities, if any, as transferor or transferee of biointermediates.

(2) Copies of all reports submitted to EPA under § 80.1451(i).

(3) Records related to the production of biointermediates for each biointermediate production facility, including all of the following:

(i) Batch volume.

(ii) Batch number.

(iii) Type and quantity of co-products produced.

(iv) Type and quantity of feedstocks used.

(v) Type and quantity of fuel used for process heat.

(vi) Calculations per § 80.1426(f), as applicable.

(vii) Date of production.

(viii) Results of any laboratory analysis of batch chemical composition or physical properties.

(4) Copies of registration documents required under § 80.1450, including information on products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per § 80.1450(b)(2)(i).

(5) Records demonstrating that feedstocks are renewable biomass, as required under paragraphs (d), (g), (h), and (j) of this section, as applicable.

(6) For any biointermediate made from Arundo donax or Pennisetum purpureum per § 80.1426(f)(14), all applicable records described in paragraph (b)(7) of this section.

(7) Records, including contracts, related to the implementation of a QAP under §§ 80.1469 and 80.1477.

(j) *Additional requirements for producers that use separated yard waste, separate food waste, separated municipal solid waste, or biogenic waste oils/fats/greases.* A renewable fuel or biointermediate producer that produces fuel or biointermediate from separated yard waste, separated food waste, separated municipal solid waste, or biogenic waste oils/fats/greases must keep all the following additional records:

* * * * *

(k) *Additional requirements for producers of renewable fuel using biogas.* * * *

* * * * *

(l) *Additional requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel, biogas, or renewable electricity.* A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.1468), biogas or renewable electricity shall keep all of the following additional records:

(1) Documents demonstrating the total volume of renewable fuel produced, total volume of renewable fuel blended into gasoline and distillate fuel, and the percentage of renewable fuel in each batch of finished fuel.

* * * * *

(3) For each batch of renewable fuel that generated RINs under § 80.1426(f)(17)(i)(B)(*2*), one or more affidavits from the party that blended or used the renewable fuel that includes all the following information:

(i) Quantity of renewable fuel received from the producer or importer.

(ii) Date the renewable fuel was received from producer.

(iii) A description of the fuel that the renewable fuel was blended into and the blend ratios for each batch, if applicable.

(iv) A description of the finished fuel, and a statement that the fuel meets all applicable standards and was sold for use as a transportation fuel, heating oil or jet fuel.

(v) Quantity of assigned RINs received with the renewable fuel, if applicable.

(vi) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

* * * * *

(m) *Requirements for independent third-party auditors.* * * *

(10) Copies of all reports required under § 80.1464.

* * * * *

(n) *Additional requirements for producers of renewable fuel using crop residue.* Producers of renewable fuel using crop residue must keep records of all of the following:

* * * * *

(r) *Transaction requirement.* Beginning July 1, 2010, all parties must keep transaction information sent to EMTS in addition to other records required under this section.

(1) For buy or sell transactions of separated RINs, parties must retain records substantiating the price reported to EPA under § 80.1452.

(2) For buy or sell transactions of separated RINs on or after January 1, 2020, parties must retain records demonstrating the transaction mechanism (*e.g.,* spot market or fulfilling a term contract).

(s) *Record retention requirement.* (1) The records required under paragraphs (a) through (d), (f) through (l), (n), and (r) of this section and under § 80.1453 must be kept for five years from the date they were created, except that records related to transactions involving RINs must be kept for five years from the date of the RIN transaction.

(2) The records required under paragraph (e) of this section must be kept through calendar year 2022.

(t) *Record availability requirement.* On request by the EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by the EPA, electronic records shall be converted to paper documents.

(u) *Record transfer requirement.* The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

(v) *English language records.* Any document requested by the Administrator under this section must be submitted in English or must include an English translation.

■ 22. Amend § 80.1460 by revising paragraphs (b)(5) and (6) and adding paragraphs (b)(8) and (k) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(5) Introduce into commerce any renewable fuel produced from a feedstock, biointermediate, or through a process that is not described in the person's registration information.

(6) Generate a RIN for fuel for which RINs have previously been generated unless the RINs were generated under § 80.1426(c)(6).

* * * * *

(8) Generate a RIN for fuel that was produced from a biointermediate for which the fuel and biointermediate were not audited under an EPA-approved quality assurance plan.

* * * * *

(k) *Biointermediate-related violations.* No person may do any of the following:

(1) Introduce into commerce for use in the production of a renewable fuel any biointermediate produced from a feedstock or through a process that is not described in the person's registration information.

(2) Produce a renewable fuel at more than one facility unless the person uses a biointermediate or the renewable biomass is not substantially altered. Form changes of renewable biomass such as bleaching through adsorption, rendering fats, chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, degumming, dewatering/drying, melting, triglycerides resulting from deodorizing, or the addition of water to produce a slurry do not constitute substantial alteration.

(3) Transfer a biointermediate from a biointermediate production facility to a facility other than the renewable fuel production facility specified in the biointermediate producer's registration under § 80.1450(b)(1)(ii)(B)(*1*).

(4) Isolate or concentrate non-characteristic components of the feedstock to yield a biointermediate not identified in a registration accepted by EPA.

(5) No person may transfer a biointermediate without complying with the PTD requirements in § 80.1453(f)

■ 23. Amend § 80.1461 by revising paragraphs (a)(1) and (2) and adding paragraph (e) to read as follows:

§ 80.1461 Who is liable for violations under the RFS program?

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for a violation of § 80.1460(e).

* * * * *

(e) *Biointermediate liability.* When a biointermediate contained in any storage tank at any facility owned, leased, operated, controlled, or supervised by any biointermediate producer, biointermediate importer, renewable fuel producer, or foreign ethanol producer is found in violation of a prohibition described in § 80.1460(k)(1) and (3), the following persons shall be deemed in violation:

(1) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who owns, leases, operates, controls, or supervises the facility where the violation is found.

(2) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who manufactured, imported, sold, offered for sale, dispensed, offered for supply, stored, transported, or caused the transportation of any biointermediate that is in the storage tank containing the biointermediate found to be in violation.

(3) Each carrier who dispensed, supplied, stored, or transported any biointermediate that was in the storage tank containing the biointermediate found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

■ 24. Amend § 80.1463 by revising paragraph (d) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

* * * * *

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4) or (6) through (8) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

■ 25. Amend § 80.1464 by:

■ a. Removing ''§ 80.127'' everywhere it appears and adding ''40 CFR 1090.1805'' in its place;

■ b. Revising paragraph (a)(3)(ii);

■ c. Adding paragraph (a)(7);

■ d . Revising paragraph (b)(1)(v)(A);

■ e. Adding paragraph (b)(1)(v)(C);

■ f. Revising paragraphs (b)(3)(ii) and (b)(4)(i);

■ g. Adding paragraphs (b)(4)(iii) and (b)(8);

■ h. Revising paragraphs (c) introductory text and (c)(2)(ii);

■ i. Adding paragraphs (c)(6) and (7) and (h); and

■ j. Revising the heading of paragraph (i)(1), paragraphs (i)(1)(i) and (iii), the heading of paragraph (i)(2), and paragraphs (i)(2)(i) and (ii).

The revisions and additions read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a

volume of renewable fuel, the volume and type of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

(7) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(b) * * *

(1) * * *

(v)(A) Obtain documentation, as required under § 80.1451(b), (d), and (e), associated with feedstock and biointermediate purchases for a representative sample of feedstocks and biointermediates separately, selected in accordance with the guidelines in 40 CFR 1090.1805, of renewable fuel batches produced or imported during the year being reviewed.

* * * * *

(C) Verify that biointermediates were properly identified in the reports, as applicable.

* * * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and compute and report the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(4) * * *

(i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2). Such documentation must include the date of the last engineering review along with date of the actual site visit by the professional engineer.

* * * * *

(iii) Verify that independent third-party engineering reviews conducted under § 80.1450(d)(3) occurred within the three-year cycle. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

* * * * *

(8) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(c) *Other parties owning RINs.* Except as specified in paragraph (c)(6) of this section, the following attest procedures must be completed for any party other than an obligated party or renewable fuel producer or importer that owns any RINs during a calendar year:

* * * * *

(2) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

(6) *Low-volume RIN owner exemption.* Any party who meets all the following criteria in a given compliance period is not required to submit an attest engagement for that compliance period:

(i) The party must be solely registered as a party owning RINs (*i.e.,* a ''RIN Owner Only'') and must not also be registered in any other role under § 80.1450 (*e.g.,* the party must not also be an obligated party, exporter of renewable fuel, renewable fuel producer, RIN generating importer, etc.).

(ii) The party must have transacted (*e.g.,* generated, bought, sold, separated, or retired) 10,000 or fewer RINs in the given compliance period.

(iii) The party has not exceeded the RIN holding threshold(s) specified in § 80.1435.

(7) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(h) *Biointermediate producers.* The following attest reports must be completed for any biointermediate producer that produces a biointermediate in a compliance year:

(1) *Biointermediate production reports.* (i) Obtain and read copies of the quarterly biointermediate production reports required under § 80.1451(i); compare the reported information to the requirements under § 80.1451(i); and report as a finding any missing or incomplete information in the reports.

(ii) Obtain any database, spreadsheet, or other documentation used to generate the information in the biointermediate production reports; compare the corresponding entries in the database or spreadsheet and report as a finding any discrepancies.

(iii) For a representative sample of biointermediate batches, selected in accordance with the guidelines in 40 CFR 1090.1805, obtain records required under § 80.1454(i); compare these records to the corresponding batch entries in the reports procured in paragraph (h)(1)(i) of this section and report as a finding any discrepancies.

(iv) Obtain the list of designated renewable fuel production facilities under § 80.1450(b)(1)(ii)(B)(*1*); compare the list of registered designated renewable fuel production facilities to those identified in the biointermediate production report; and report as a finding any discrepancies.

(v) Provide the list of renewable fuel producers receiving any transfer of biointermediate batches and calculate the total volume from the batches received.

(2) *Independent third-party engineering review.* (i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2).

(ii) Review and verify the written verification and records generated as part of the independent third-party engineering review.

(iii) Provide the date of the submission of the last engineering review along with the date of the actual site visit by the professional engineer. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

(iv) Compare and provide the total volume of produced biointermediate during the compliance year as compared to the production capacity stated in the engineering review and report as a finding if the volume of produced biointermediate is greater than the stated production capacity.

(3) *Product transfer documents.* (i) Obtain contracts, invoices, or other documentation for each batch in the

representative sample under paragraph (h)(1)(iii) of this section and the corresponding copies of product transfer documents required under § 80.1453; compare the product transfer documents with the contracts and invoices and report as a finding any discrepancies.

(ii) Verify that the product transfer documents obtained in paragraph (h)(3)(i) of this section contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iii) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (h)(3)(ii) of this section with the records obtained and reviewed under paragraph (h)(1)(iii) of this section and report as a finding any exceptions.

(i) * * *

(1) *Comparing RIN and biointermediate verification reports with approved QAPs.* (i) Obtain and read copies of reports required under § 80.1451(g)(1). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(iii) Confirm that the independent third-party auditor only verified RINs and biointermediates covered by approved QAPs under § 80.1469. Identify as a finding any discrepancies.

(2) *Checking third-party auditor's RIN and biointermediate verification.* (i) Obtain and read copies of reports required under § 80.1451(g)(2). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(ii) Obtain all notifications of potentially invalid RINs and potentially improperly produced biointermediate submitted to the EPA under §§ 80.1474(b)(3) and 80.1477(d)(2) respectively.

* * * * *

■ 26. Revise § 80.1468 to read as follows:

§ 80.1468 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at U.S. EPA and at the National Archives and Records Administration (NARA). Contact U.S. EPA at: U.S. EPA, Air and Radiation Docket and Information Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460; (202) 566–1742. For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraph(s) of this section.

(b) ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959; (877) 909–2786; *www.astm.org.*

(1) ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021 (''ASTM D975''); IBR approved for §§ 80.1401; 80.1426(f); 80.1450(b); 80.1451(b); 80.1454(l).

(2) ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019 (''ASTM D1250''); IBR approved for § 80.1426(f).

(3) ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020 (''ASTM D4442''); IBR approved for § 80.1426(f).

(4) ASTM D4444–13 (Reapproved 2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018 (''ASTM D4444''); IBR approved for § 80.1426(f).

(5) ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020 (''ASTM D6751''); IBR approved for § 80.1401.

(6) ASTM D6866–22, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved March 15, 2022 (''ASTM D6866''); IBR approved for §§ 80.1426(f); 80.1430(e).

(7) ASTM E711–87 (R2004), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, reapproved 2004 (''ASTM E711''); IBR approved for § 80.1426(f).

(8) ASTM E870–82 (Reapproved 2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019 (''ASTM E870''); IBR approved for § 80.1426(f).

■ 27. Amend § 80.1469 by revising the introductory text and paragraphs (c)(1)(vi) and (vii), (c)(2)(i), (c)(3)(i), (c)(5), and (f)(1) and (2) to read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

This section specifies the requirements for Quality Assurance Plans (QAPs) for renewable fuels and biointermediates.

* * * * *

(c) * * *

(1) * * *

(vi) Feedstock(s) and biointermediate(s) are consistent with production process and D code being used as permitted under the approved pathway and is consistent with information recorded in EMTS.

(vii) Feedstock(s) and biointermediate(s) are not renewable fuel for which RINs were previously generated unless the RINs were generated under § 80.1426(c)(6). For renewable fuels that have RINs generated under § 80.1426(c)(6), verify that renewable fuels used as a feedstock meet all applicable requirements of this paragraph (c)(1).

* * * * *

(2) * * *

(i) Production process is consistent with the renewable fuel producer or biointermediate producer's registration under § 80.1450(b).

* * * * *

(3) * * *

(i) If applicable, renewable fuel was designated for qualifying uses as transportation fuel, heating oil, or jet fuel in the covered location pursuant to § 80.1453.

* * * * *

(5) *Representative sampling.* Independent third-party auditors may use a representative sample of batches of renewable fuel or biointermediate in accordance with the procedures described in 40 CFR 1090.1805 for all components of this paragraph (c) except for paragraphs (c)(1)(ii) and (iii), (c)(2)(ii), (c)(3)(vi), and (c)(4)(ii) and (iii) of this section. If a facility produces both a renewable fuel and a biointermediate, the independent third-party auditor must select separate representative samples for the renewable fuel and biointermediate.

* * * * *

(f) * * *

(1) A new QAP must be submitted to EPA according to paragraph (e) of this section and the independent third-party auditor must update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a renewable fuel or biointermediate production facility audited by an

independent third-party auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the change:

(i) Change in feedstock or biointermediates.

(ii) Change in type of fuel or biointermediate produced.

(iii) Change in facility operations or equipment that may impact the capability of the QAP to verify that RINs are validly generated or biointermediates are properly produced.

(2) A QAP ceases to be valid as the basis for verifying RINs or a biointermediate under a new pathway until a new pathway-specific QAP, submitted to the EPA under this paragraph (f), is approved pursuant to paragraph (e) of this section.

■ 28. Amend § 80.1471 by:

■ a. Revising paragraphs (b)(1), (4), (5), and (6) and (c);

■ b. Adding paragraph (e)(5); and

■ c. Revising paragraphs (f)(1) introductory text, (f)(1)(ii), and (g).

The revisions and addition read as follows:

§ 80.1471 Requirements for QAP auditors.

* * * * *

(b) * * *

(1) The independent third-party auditor and its contractors and subcontractors must not be owned or operated by the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer or any subsidiary or employee of the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

* * * * *

(4) The independent third-party auditor and its contractors and subcontractors must be free from any interest or the appearance of any interest in the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer's business.

(5) The renewable fuel producer, foreign renewable fuel producer, or biointermediate producer must be free from any interest or the appearance of any interest in the third-party auditor's business and the businesses of third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors must not have performed an attest engagement under § 80.1464 for the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer in the same calendar year as a QAP audit conducted pursuant to § 80.1472.

* * * * *

(c) Independent third-party auditors must maintain professional liability insurance. Independent third-party auditors must use insurance providers that possess a financial strength rating in the top four categories from Standard & Poor's or Moody's (*i.e.,* AAA, AA, A, or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's), or a comparable rating acceptable to EPA. Independent third-party auditors must disclose the level of professional liability insurance they possess when entering into contracts to provide RIN verification services.

* * * * *

(e) * * *

(5) The independent third-party auditor must not identify RINs generated for renewable fuel produced using a biointermediate as having been verified under a QAP unless the biointermediate used to produce the renewable fuel was verified under an approved QAP pursuant to § 80.1477.

(f)(1) Except as specified in paragraph (f)(2) of this section, auditors may only verify RINs that have been generated after the audit required under § 80.1472 has been completed. Auditors may only verify biointermediates that were produced after the audit required under § 80.1472 has been completed. Auditors must only verify RINs generated from renewable fuels produced from biointermediates after the audit required under § 80.1472 has been completed for both the biointermediate production facility and the renewable fuel production facility.

* * * * *

(ii) Verification of RINs or biointermediates may continue for no more than 200 days following an on-site visit or 380 days after an on-site visit if a previously the EPA-approved remote monitoring system is in place at the renewable fuel production facility.

* * * * *

(g) The independent third-party auditor must permit any representative of the EPA to monitor at any time the implementation of QAPs and renewable fuel and biointermediate production facility audits.

* * * * *

■ 29. Amend § 80.1472 by revising paragraphs (a)(4), (b)(3)(i) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) to read as follows:

§ 80.1472 Requirements for quality assurance audits.

(a) * * *

(4) Each audit shall include a review of documents generated by the renewable fuel producer or biointermediate producer.

(b) * * *

(3) * * *

(i) As applicable, the independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility:

* * * * *

(ii) * * *

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable.

* * * * *

§ 80.1473 [Amended]

■ 30. Amend § 80.1473(f) by removing the text ''*support@epamts-support.com*'' and adding, in its place, the text ''*fuelsprogramsupport@epa.gov*''.

§ 80.1474 [Amended]

■ 31. Amend § 80.1474(b) by removing the text ''*support@epamts-support.com*'' wherever it appears and adding, in its place, the text ''*fuelsprogramsupport@epa.gov*''.

■ 32. Amend § 80.1475 by:

■ a. In paragraph (a)(2), removing the text ''§§ 80.125 through 80.127 and § 80.130'' and adding, in its place, the text ''40 CFR 1090.1800 through 1090.1850'';

■ b. Revising the first sentence of paragraph (d)(1) and paragraph (d)(3); and

■ c. In paragraph (d)(4) introductory text, removing the text ''§ 80.127'' and adding, in its place, the text ''40 CFR 1090.1805''.

The revisions read as follows:

§ 80.1475 What are the additional attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

* * * * *

(d) * * *

(1) For each of the volumes listed in paragraphs (c)(1)(iii) through (vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. * * *

* * * * *

(3) Agree the volume totals on the listing to the tender volume total in the

inventory reconciliation analysis obtained in paragraph (c) of this section.

* * * * *

■ 33. Add § 80.1476 to read as follows:

§ 80.1476 Requirements for biointermediate producers.

Biointermediate producers must comply with the following requirements:

(a) *Registration.* No later than 60 days prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers must register with EPA pursuant to the requirements of § 80.1450(b).

(b) *Reporting.* Biointermediate producers must comply with the reporting requirements in § 80.1451(j).

(c) *Recordkeeping.* Biointermediate producers must comply with the recordkeeping requirements in § 80.1454(i).

(d) *PTDs.* Biointermediate producers must comply with the PTD requirements in § 80.1453(f).

(e) *Quality Assurance Plans.* Prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers must have an approved quality assurance plan pursuant to § 80.1477(b) and the independent third-party auditor must have conducted a site visit of the biointermediate production facility under § 80.1472.

(f) *Attest engagements.* Biointermediate producers must comply with the annual attest engagement requirements in § 80.1464(h).

(g) *Limitations on biointermediate transfers and production.* (1) A biointermediate producer must transfer all biointermediates produced from a single biointermediate facility to a single renewable fuel production facility as designated under § 80.1450(b)(1)(ii)(B)(*1*).

(2)(i) Except as specified in paragraph (g)(2)(ii) of this section, a batch of biointermediate must be segregated from other batches of biointermediate (even if it is the same type of biointermediate), other feedstocks, foreign ethanol, and renewable fuels from the point that the batch of biointermediate is produced to the point where the batch of biointermediate is received at the renewable fuel production facility designated under § 80.1450(b)(1)(ii)(B)(*1*).

(ii)(A) Batches of biointermediate may be commingled between the biointermediate production facility and the designated renewable fuel production facility as long as each batch is produced at the same biointermediate production facility, is the same type of biointermediate, and no other feedstocks, biointermediates, foreign ethanol, or renewable fuels are comingled.

(B) A renewable fuel producer may commingle batches of biointermediate at an off-site storage tank if all the following conditions are met:

(*1*) Only batches of the same type of biointermediate are commingled and no other feedstocks, biointermediates, foreign ethanol, or renewable fuels are comingled in the off-site storage tank.

(*2*) The renewable fuel producer owns or is the sole position holder in the off-site storage tank.

(3) Renewable fuel producers that receive biointermediate at a renewable fuel production facility may not be a biointermediate producer.

(4) A biointermediate must not be used to make another biointermediate.

(5) A foreign biointermediate producer must not transfer biointermediate to a non-RIN-generating foreign producer.

(h) *Batch numbers and volumes.* (1) Each batch of biointermediate produced at a biointermediate production facility must be assigned a number (the ''batch number''), consisting of the EPA-assigned company registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (*e.g.,* 4321–54321–95–000001, 4321–54321–95–000002, etc.).

(2) For biointermediates measured on a volume basis, the volume of each batch of biointermediate must be adjusted to a standard temperature of 60 °F as specified in § 80.1426(f)(8).

(i) *Designation.* Each batch of biointermediate produced at a biointermediate production facility must be designated for use in the production of a renewable fuel in accordance with the biointermediate producer's registration under § 80.1450. The designation for the batch of biointermediate must be clearly indicated on PTDs for the biointermediate as described in § 80.1453(f)(1)(vi). The same batch or a portion of a batch may not be designated as both a biointermediate and a renewable fuel.

■ 34. Add § 80.1477 to read as follows:

§ 80.1477 Requirements for QAPs for biointermediate producers.

(a) Independent third-party auditors that verify biointermediate production must meet the requirements of § 80.1471(a) through (c) and (f) through (h), as applicable.

(b) QAPs approved by EPA to verify biointermediate production must meet the requirements in § 80.1469(c) through (f), as applicable.

(c) Quality assurance audits, when performed, must be conducted in accordance with the requirements in § 80.1472(a) and (b)(3).

(d)(1) If an independent third-party auditor identifies a potentially improperly produced biointermediate, the independent third-party auditor must notify EPA, the biointermediate producer, and the renewable fuel producer that may have been transferred the biointermediate within five business days of the identification, including an initial explanation of why the biointermediate may have been improperly produced.

(2) If RINs were generated from the potentially improperly produced biointermediate, the RIN generator must follow the applicable identification and treatment of PIRs as specified in § 80.1474.

(e) For the generation of Q–RINs for renewable fuels that were produced from a biointermediate, the biointermediate must be verified under an approved QAP as described in paragraph (b) of this section and the RIN generating facility must be verified under an approved QAP as described in § 80.1469.

■ 35. Add § 80.1478 to read as follows:

§ 80.1478 Requirements for foreign biointermediate producers and importers.

(a) *Foreign biointermediate producer.* For purposes of this subpart, a foreign biointermediate producer is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'') that has been approved by EPA to produce biointermediate for use in the production of renewable fuel by a RIN-generating renewable fuel producer.

(b) *Foreign biointermediate producer requirements.* Any foreign biointermediate producer must meet all requirements that apply to biointermediate producers under this subpart as a condition of being approved as a foreign biointermediate producer under this subpart.

(c) *Foreign biointermediate producer commitments.* Any foreign

biointermediate producer must commit to the following provisions as a condition of being registered as a foreign biointermediate producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign biointermediate producer facility.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Biointermediate is produced.

(B) Documents related to foreign biointermediate producer operations are kept.

(C) Biointermediate is stored or transported between the foreign biointermediate producer and the renewable fuel producer, including storage tanks, vessels, and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to the following:

(A) The volume of biointermediate produced or delivered to renewable fuel production facilities.

(B) Transfers of title or custody to the biointermediate.

(C) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign biointermediate producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 business days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia must be named, and service on this agent constitutes service on the foreign biointermediate producer or any employee of the foreign biointermediate producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations in this title promulgated thereunder must be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign biointermediate producer or any employee of the foreign biointermediate producer related to the provisions of this section.

(5) Applying to be an approved foreign biointermediate producer under this section, or producing or exporting biointermediate under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign biointermediate producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph (c) must be signed by the owner or president of the foreign biointermediate producer company.

(8) In any case where the biointermediate produced at a foreign biointermediate production facility is stored or transported by another company between the production facility and the vessel that transports the biointermediate to the United States, the foreign biointermediate producer must obtain from each such other company a commitment that meets the requirements specified in paragraphs (c)(1) through (7) of this section, and these commitments must be included in the foreign biointermediate producer's application to be an approved foreign biointermediate producer under this subpart.

(d) *Sovereign immunity.* By submitting an application to be an approved foreign biointermediate producer under this subpart, or by producing and exporting biointermediate fuel to the United States under such approval, the foreign biointermediate producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *English language reports.* Any document submitted to EPA by a foreign biointermediate producer must be in English or must include an English language translation.

(f) *Withdrawal or suspension of foreign biointermediate producer approval.* EPA may withdraw or suspend a foreign biointermediate producer's approval where any of the following occur:

(1) A foreign biointermediate producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (c)(1) of this section.

(3) A foreign biointermediate producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(g) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign biointermediate producer, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign biointermediate producer company, or by that person's immediate designee, and must contain the following declarations:

(i) *Certification.*

''I hereby certify:

That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER] with regard to all statements contained herein;

That I am aware that the information contained herein is being Certified, or

submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) *Affirmation.*

''I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1478 apply to [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''

(h) *Requirements for biointermediate importers.* Any biointermediate importer must meet all the following requirements:

(1) For each biointermediate batch, any biointermediate importer must have an independent third party do all the following:

(i) Determine the volume of biointermediate in the truck, railcar, vessel, or other shipping container.

(ii) Determine the name and EPA-assigned registration number of the foreign biointermediate producer that produced the biointermediate.

(iii) Determine the name and country of registration of the truck, railcar, vessel, or other shipping container used to transport the biointermediate to the United States.

(iv) Determine the date and time the truck, railcar, vessel, or other shipping container arrives at the United States port of entry.

(2) Any biointermediate importer must submit documentation of the information determined under paragraph (h)(1) of this section within 30 days following the date any truck, railcar, vessel, or other shipping container transporting biointermediate arrives at the United States port of entry to all the following:

(i) The foreign biointermediate producer.

(ii) The renewable fuel producer.

(3) The biointermediate importer and the independent third party must keep records of the audits and reports required under paragraphs (h)(1) and (2) of this section for five years from the date of creation.

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 36. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart A—General Provisions

■ 37. Amend § 1090.15 by:

■ a. In paragraphs (a) and (d), removing the text ''(b) and (c)'' and adding, in its place, the text ''(b) through (d)''

■ b. In paragraph (c) introductory text, removing the word ''section'' and adding, in its place, the word ''part'';

■ c. Redesignating paragraph (d) as paragraph (e); and

■ d. Adding a new paragraph (d).

The addition reads as follows:

§ 1090.15 Confidential business information.

* * * * *

(d)(1) The following information contained in any enforcement action taken under this part is not entitled to confidential treatment under 40 CFR part 2, subpart B:

(i) The company's name.

(ii) The facility's name.

(iii) Any EPA-issued company and facility identification numbers.

(iv) The time or time period when any violation occurred.

(v) The quantity of fuel, fuel additive, or regulated blendstock affected by the violation.

(vi) Information relating to the exceedance of the fuel standard associated with the violation.

(vii) Information relating to the generation, transfer, or use of credits associated with the violation.

(viii) Any other information relevant to describing the violation.

(2) Enforcement actions within the scope of paragraph (d)(1) of this section include notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments.

* * * * *

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Part III

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Planning and Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit With Another Accounting Firm; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95159; File No. PCAOB–2022–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Planning and Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit With Another Accounting Firm

June 24, 2022.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (''Act''), notice is hereby given that on June 24, 2022, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 21, 2022, the Board adopted ''Planning and Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit with Another Accounting Firm'' and related amendments to its auditing standards, attestation standards, auditing interpretations, rules, and a form (collectively, the ''proposed rules''). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-042-proposed-amendments-relating-to-the-supervision-of-audits-involving-other-auditors-and-proposed-auditing-standard* and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(1) Purpose

Summary

The Board has adopted amendments to its auditing standards to strengthen requirements for planning and supervising audits involving accounting firms and individual accountants (collectively, ''other auditors'') outside the accounting firm that issues the auditor's report (the ''lead auditor''). In these audits, the lead auditor issues the audit report on the company's consolidated financial statements, but other auditors often perform important work on the audit. The roles of other auditors have increased as companies' global operations have grown. In addition, the Board adopted a new auditing standard that will apply when the lead auditor divides responsibility for an audit with another accounting firm (''referred-to auditor'').

Working with other auditors and referred-to auditors can differ from working with people in the same firm, creating challenges in coordination and communication. These challenges can lead to misunderstandings about the nature, timing, and extent of their work and can reduce audit quality. It is important for investor protection that the lead auditor adequately plan and supervise the work of other auditors so that the audit is performed in accordance with PCAOB standards and provides sufficient appropriate evidence to support the lead auditor's opinion in the audit report.

This rulemaking is intended to increase and improve the lead auditor's involvement in and evaluation of the other auditors' work. The Board believed that the heightened attention to other auditors' work will improve communication among auditors and the lead auditor's ability to prevent or detect deficiencies in that work, and thus enhance the quality of audits involving other auditors and promote investor protection.

The amendments to the Board's auditing standards are intended to improve PCAOB standards principally by (i) applying a risk-based supervisory approach to the lead auditor's oversight of other auditors and (ii) requiring that the lead auditor perform certain procedures when planning and supervising an audit that involves other auditors. The amendments have taken into account recent practice developments in the lead auditor's oversight of other auditors' work, including the greater use of communication technology. In brief, the amendments:

- Require that the engagement partner determine whether his or her firm's participation in the audit is sufficient for the firm to carry out the responsibilities of a lead auditor and report as such. The amendments also provide considerations for the engagement partner to use in making this determination and require that the audit's engagement quality reviewer review the determination.
- Require that the lead auditor, when determining the engagement's compliance with independence and ethics requirements, understand the other auditors' knowledge of those requirements and experience in applying them. The amendments also require that the lead auditor obtain and review written affirmations regarding the other auditors' policies and procedures related to those requirements and regarding compliance with the requirements, and a description of certain auditor-client relationships related to independence. In addition, the amendments require the sharing of information about changes in circumstances and the updating of affirmations and descriptions in light of those changes.
- Require that the lead auditor understand the knowledge, skill, and ability of other auditors' engagement team members who assist the lead auditor with planning and supervision, and obtain a written affirmation from other auditors that their engagement team members possess the knowledge, skill, and ability to perform assigned tasks.
- Require that the lead auditor supervise other auditors under the Board's standard on audit supervision and inform other auditors about the scope of their work, identified risks of material misstatement, and certain other key matters. The amendments also require that the lead auditor and other auditors communicate about the audit procedures to be performed, and any changes needed to the procedures. In addition, the amendments require the lead auditor to obtain and review written affirmations from other auditors about their performance of work in accordance with the lead auditor's instructions, and to direct other auditors to provide certain documentation about their work.
- Provide that, in multi-tiered audits, a first other auditor may assist the lead auditor in performing certain required

procedures with respect to second other auditors.

This rulemaking rescinds an interim standard but carries forward and strengthens some of its requirements in a new standard that applies to those infrequent situations where the lead auditor divides responsibility for a portion of the audit with another audit firm and therefore does not supervise the work performed by that firm. In these situations, the lead auditor refers in the audit report to the work of that auditor (*i.e.,* a referred-to auditor). This new standard requires that in these situations the lead auditor determine that audit procedures were performed regarding the consolidation or combination of financial statements of the business units audited by the referred-to auditor into the company's financial statements. The standard also requires that the lead auditor obtain the referred-to auditor's written representation that it is independent and duly licensed to practice, and that the lead auditor disclose in the audit report the magnitude of the portion of the financial statements and, if applicable, internal controls audited by the referred-to auditor.

The Board has adopted the amendments and new standard after three rounds of public comment. Commenters generally expressed support for the rulemaking's objective of improving the quality of audits involving other auditors and referred-to auditors. They also suggested ways to revise or clarify the proposed amendments and standard. The Board took into account these comments, as well as observations of the Board and its staff through PCAOB oversight activities (including audit inspections and enforcement cases).

The amendments and new standard apply to all audits conducted under PCAOB standards. Subject to approval by the Securities and Exchange Commission (''SEC'' or ''Commission''), the amendments and new standard will take effect for audits for fiscal years ending on or after December 15, 2024.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of economic impacts of the proposed rules is discussed in section D below.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rule amendment for public comment in PCAOB Release No. 2016–002 (Apr. 12, 2016). The Board received 23 written comment letters on that release. The Board issued a supplemental request for public comment in PCAOB Release No. 2017–005 (Sept. 26, 2017). The Board received 22 written comment letters on that release. The Board issued a second supplemental request for public comment in PCAOB Release No. 2021–005 (Sept. 28, 2021). The Board received 19 written comment letters on that release. The Board has carefully considered all comments received. The Board's response to the comments it received and the changes made to the proposed rules in response to the comments received are discussed below.

Background

This rulemaking addresses the responsibilities of the lead auditor (*i.e.,* the audit firm that issues the auditor's report) in planning and supervising an audit that involves the work of other auditors. In formulating the approach, the Board sought public comment several times. In April 2016, the Board issued a proposal (''2016 Proposal'') to amend our auditing standards and issue a new standard, to strengthen the requirements for lead auditors in audits that involve other auditors and referred-to auditors.[1] In September 2017, after considering public comments on the 2016 Proposal, the Board issued a supplemental request for comment (''2017 SRC'') on certain targeted revisions to the proposed amendments.[2] In September 2021, after considering the public comments on the prior releases, the Board issued a second supplemental request for comment (''2021 SRC'') to seek additional public comment on certain revisions to the amendments and other matters.[3]

Commenters on the 2016 Proposal, 2017 SRC, and 2021 SRC (collectively, the ''proposing releases'') generally expressed support for the rulemaking's objective of improving the quality of audits involving other auditors and referred-to auditors. They also suggested ways to revise or clarify the proposed amendments and standard. The Board considered all of the comments and adopted the amendments and standard (collectively ''amendments'' or ''final amendments'') for the reasons discussed below.

Rulemaking History

In the 2016 Proposal, the Board proposed to amend PCAOB auditing standards to strengthen existing requirements and impose a more uniform approach to the lead auditor's supervision of other auditors.[4] The proposed amendments were intended to increase the lead auditor's involvement in, and evaluation of, the work of other auditors, enhance the ability of the lead auditor to prevent or detect deficiencies in the work of other auditors, and facilitate improvements in the quality of the work of other auditors. The proposed amendments also included a proposed new standard that would apply when the lead auditor divides responsibility for a portion of the audit with another accounting firm and refers to the referred-to auditor's report in the lead auditor's report. The Board received 23 comment letters on the 2016 Proposal.[5] Commenters generally expressed support for the rulemaking's objective of improving the quality of audits involving other auditors and referred-to auditors. Some expressed concerns or requested clarification about certain proposed requirements.

In response to the input from commenters, the Board issued a supplemental request for comment on the 2016 Proposal in September 2017.[6] The 2017 SRC discussed significant comments received and presented revisions to the proposed amendments while leaving the overall proposed approach to the supervision of other auditors intact. The Board received 22 comment letters on the 2017 SRC.[7] Commenters generally expressed continued support for the project's objectives, and a number of commenters also suggested changes to, or requested clarification or guidance on, certain proposed requirements.

After consideration of the comments on the 2017 SRC and further analysis of issues raised by commenters and

[1] Proposed Amendments Relating to the Supervision of Audits Involving Other Auditors and Proposed Auditing Standard—Dividing Responsibility for the Audit with Another Accounting Firm, PCAOB Release No. 2016–002 (Apr. 12, 2016).

[2] Supplemental Request for Comment: Proposed Amendments Relating to the Supervision of Audits Involving Other Auditors and Proposed Auditing Standard—Dividing Responsibility for the Audit with Another Accounting Firm, PCAOB Release No. 2017–005 (Sept. 26, 2017).

[3] Second Supplemental Request for Comment: Proposed Amendments Relating to the Supervision of Audits Involving Other Auditors and Proposed Auditing Standard—Dividing Responsibility for the Audit with Another Accounting Firm, PCAOB Release No. 2021–005 (Sept. 28, 2021).

[4] *See* 2016 Proposal at Section II.

[5] *See* 2017 SRC at 6–7 (discussing comment letters received on the 2016 Proposal).

[6] 2017 SRC.

[7] *See* 2021 SRC at 7 (discussing comment letters received on the 2017 SRC).

developments in this area, the Board issued a second supplemental request for comment in September 2021. The proposed revisions in the 2021 SRC were designed to adjust certain requirements to better take into account the lead auditor's role in the audit, address certain scenarios encountered in practice, revise certain proposed definitions to reflect recent amendments to the Board's standards, and improve the readability of the amended standards. The Board received 19 comment letters on the 2021 SRC. Commenters continued to generally express support for the project's objectives, and also suggested some changes to, or requested clarification or guidance on, certain proposed requirements. The Board has considered the comments on the 2021 SRC, as well as on the previous proposing releases, in developing the final amendments.[8] The Board has also considered the observations of the Board and its staff from PCAOB oversight activities.

Overview of Existing Requirements

This section discusses key provisions of existing PCAOB auditing standards that address lead auditor responsibilities involving the work of other auditors or referred-to auditors that participate in an audit. Depending on the circumstances of an audit involving other auditors, one of two standards applies, as described below.

In 2003, the Board adopted the standard known today as AS 1205, *Part of the Audit Performed by Other Independent Auditors* (at that time, AU sec. 543), when it adopted the auditing profession's standards then in existence.[9] AS 1205 imposes requirements on a lead auditor (or ''principal auditor,'' in the terminology of AS 1205) that uses the work and reports of other independent auditors that have audited the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the financial statements audited by the lead auditor. These requirements relate to situations in which the lead auditor uses the work and reports of other auditors or referred-to auditors by (i) assuming responsibility for the other auditors' work or (ii) dividing responsibility for the audit with referred-to auditors and referring to their work and reports in the lead auditor's audit report.[10] Those ''divided-responsibility'' situations, as discussed below, are relatively uncommon.

In 2010, the Board adopted AS 1201, *Supervision of the Audit Engagement* (at that time, Auditing Standard No. 10), when it adopted eight new auditing standards that set forth the auditor's responsibilities for assessing and responding to risk in an audit.[11] AS 1201 governs the supervision of the audit engagement, including supervising the work of engagement team members outside the engagement partner's firm. Under existing PCAOB standards, the lead auditor supervises the work of another auditor under AS 1201 in situations not covered by AS 1205.[12]

Figure 1 illustrates an example of a U.S.-based audit that involves other accounting firms, and the PCAOB auditing standards that apply to the audit. In the example, Accounting Firm 1 is the lead auditor, and it involves Accounting Firm 2 by either (A) assuming responsibility for the work and reports of Accounting Firm 2 in accordance with AS 1205, or (B) supervising the work of Accounting Firm 2 in accordance with AS 1201. The lead auditor (C) divides responsibility for part of the audit with Accounting Firm 3 in accordance with AS 1205 and refers to Accounting Firm 3 in the lead auditor's audit report on the consolidated financial statements.

[8] The comment letters received on the 2016 Proposal, 2017 SRC, and 2021 SRC are available in the docket for this rulemaking on the PCAOB's website (*https://pcaobus.org/Rulemaking/Pages/Docket042Comments.aspx*).

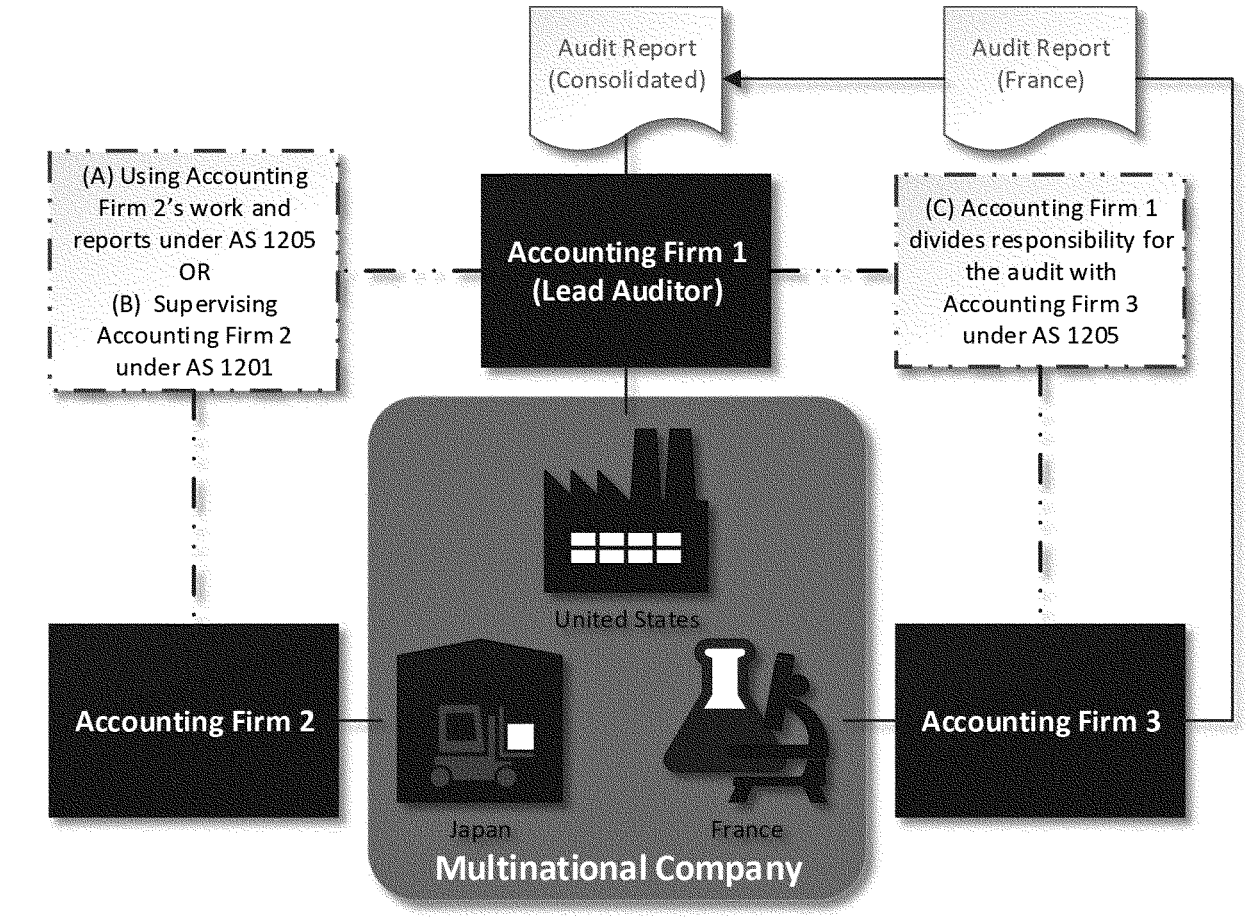
[9] In 1963, the American Institute of Certified Public Accountants (''AICPA'') issued a codification of auditing standards that included several paragraphs on using the work of other auditors or referred-to auditors. In 1971, the AICPA issued Statement on Auditing Procedure No. 45, *Using the Work and Reports of Other Auditors,* and in 1972 it codified the standard in section 543 of the Statement on Auditing Standards No. 1 (AU sec. 543). In 2003, the PCAOB adopted the auditing profession's standards in existence at that time, including AU sec. 543. *See Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006 (Apr. 18, 2003). In 2015, the PCAOB reorganized its auditing standards using a topical structure and a single, integrated numbering system. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Release No. 2015–002 (Mar. 31, 2015). As part of that rulemaking, AU sec. 543 was reorganized as AS 1205. The reorganization did not impose additional requirements on auditors or substantively change the requirements of that standard.

[10] For example, the lead auditor may divide responsibility for a portion of the audit with another firm if it is impracticable for the lead auditor to review the other firm's work. *See* AS 1205.06.

[11] *Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release No. 2010–004 (Aug. 5, 2010). Among other things, these risk assessment standards established risk-based requirements for determining the necessary audit work in multi-location audit engagements.

[12] *See* second note to AS 1205.01.

Figure 1. Example of an Audit Involving Other Accounting Firms



The following discusses AS 1205 and AS 1201 in more detail:

(A) *Using the work and reports of other auditors under AS 1205.* If an auditor uses, and assumes responsibility for, the work and reports of other auditors that audited the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the financial statements presented, AS 1205 includes the following requirements:[13]

- When significant parts of the audit are performed by other auditors (from the same network of firms as the lead auditor or outside the network), the auditor is required to decide whether its own participation in the audit is sufficient to enable it to serve as the lead auditor (or, in the language of AS 1205, the ''principal auditor'') and to report as lead auditor on the company's consolidated financial statements.[14]
- Whether or not the lead auditor decides to make reference to the audit of the other auditor, the lead auditor is required to make inquiries about the professional reputation and independence of the other auditor.[15] In addition, the lead auditor is required to adopt appropriate measures to assure the coordination of its activities with those of the other auditor in order to achieve a proper review of the matters affecting the consolidating or combining of accounts in the financial statements. Those measures may include procedures to ascertain through communication with the other auditor:
- That the other auditor is aware that the financial statements of the component which it is to audit are to be included in the financial statements on which the lead auditor will report, and that the other auditor's report will be relied upon (and, where applicable, referred to) by the lead auditor;
- That the other auditor is familiar with the accounting principles generally accepted in the United States and with the standards of the PCAOB, and will conduct its audit and issue its report in accordance with those standards;
- That the other auditor has knowledge of the SEC's financial reporting requirements; and
- That a review will be made of matters affecting elimination of intercompany transactions and accounts and, if appropriate, the uniformity of accounting practices among the components included in the financial statements.[16]
- The lead auditor must obtain, review, and retain certain information from the other auditor before issuing the report, including an engagement completion document, a list of significant risks, the other auditor's responses to those risks, the results of the other auditor's related procedures, and significant deficiencies and material

[13] In addition, in situations governed by AS 1205, the lead auditor is required by the Board's standard on planning, AS 2101, *Audit Planning,* to perform procedures to determine the locations or business units at which audit procedures should be performed. *See* AS 2101.11–.13. This also applies to situations in which the auditor divides responsibility with another accounting firm. *See* AS 2101.14.

[14] *See* AS 1205.02.

[15] AS 1205.10.

[16] AS 1205.10.c.

weaknesses in internal control over financial reporting.[17]

• The lead auditor also should [18] consider performing one or more of the following procedures: visiting the other auditor, reviewing the audit programs of the other auditor (and, in some cases, issuing instructions to the other auditor), and reviewing additional audit documentation of significant findings or issues in the engagement completion document.[19]

(B) *Including the other auditors in the engagement team and supervising their work under AS 1201.* This standard governs the auditor's supervision of an audit engagement, including the work of other auditors who are members of the same engagement team, wherever they are located. AS 1201, as it relates to the supervision of other auditors on the engagement team, includes the following requirements:

• The engagement partner is responsible for the engagement and its performance.[20] The engagement partner may seek assistance from appropriate engagement team members in fulfilling his or her responsibilities for the engagement and its performance.[21] Engagement team members can be from the engagement partner's firm or outside the firm.

• The engagement partner and others who assist the engagement partner in supervising the work of other engagement team members are required to:

• Inform the engagement team members of their responsibilities for the work they are to perform, including the objective of the procedures they are to perform, the nature, timing, and extent of those procedures, and matters that could affect those procedures;

• Direct the engagement team members to inform the engagement partner or supervisors of significant accounting and auditing issues arising during the audit; and

• Review the work of engagement team members to evaluate whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work support the conclusions reached.[22]

• The engagement partner and others who assist the engagement partner in supervising the audit should determine the extent of supervision necessary for engagement team members to perform their work as directed and form appropriate conclusions. Under this standard, requirements for supervision are risk-based and scalable, and the necessary extent of supervision varies depending on, for example, the nature of the assigned work, the risks of material misstatement associated with that work, and the knowledge, skill, and ability of each individual involved.[23]

(C) *Dividing responsibility for the audit with another accounting firm.* AS 1205 also governs audits in which the lead auditor divides responsibility for the audit with another accounting firm that issues a separate auditor's report on the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the company's financial statements.[24] The requirements of AS 1205 that apply under these circumstances are more limited than the requirements that apply to the lead auditor's use of the work and reports of other auditors when the lead auditor assumes responsibility for the other auditor's work (discussed in item A above).[25] For example, AS 1205 does not require the lead auditor to obtain, review, and retain certain information from the accounting firm with which the lead auditor divides responsibility for the audit (which is required when the lead auditor assumes responsibility for another firm's work under AS 1205).[26] If the lead auditor refers in its report to the work of another firm, the lead auditor's report indicates the division of responsibility and the magnitude of the portion of the financial statements audited by the other firm.[27]

Existing Practice

This section describes the state of practice—including the evolution of audit practices and related inspection findings—that the Board and its staff have observed in past years through PCAOB oversight activities (including through observations from audit inspections and enforcement cases).

Evolution of Auditing Practice at Accounting Firms

Auditors around the world, even when they perform audit procedures that are required to comply with PCAOB standards, may be influenced by international and home country auditing standards. With respect to the use of other auditors, the standards of the International Auditing and Assurance Standards Board (''IAASB'')—specifically, International Standard on Auditing (''ISA'') 600 [28]—establishes requirements for ''group audits.'' [29] ISA 600 was originally developed in the wake of several significant frauds that involved multinational groups of companies, audited by multiple accounting firms.[30] In December 2021, the IAASB approved amendments to ISA 600 in a project that was informed by, among other things, persistent deficiencies in group audits reported by the International Forum of Independent Audit Regulators (''IFIAR'').[31]

[17] AS 1205.12.

[18] The word ''should,'' as used in the auditing and related professional practice standards, indicates responsibilities that are presumptively mandatory. *See* Paragraph (a)(2) of PCAOB Rule 3101, *Certain Terms Used in Auditing and Related Professional Practice Standards.* Rule 3101 also defines other terms, such as ''must'' and ''may,'' that describe the degree of responsibility that the standards impose on auditors.

[19] AS 1205.12.

[20] AS 1201.03.

[21] AS 1201.04.

[22] AS 1201.05.

[23] AS 1201.06.

[24] For auditors' reports on non-issuer entities, where the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in the auditor's report, SEC rules require that the other accounting firm's report be filed with the SEC. *See* Rule 2–05 of Regulation S–X, 17 CFR 210.2–05.

[25] AS 1205.06–.09.

[26] AS 1205.12.

[27] AS 1205.07–.09.

[28] ISA 600, *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)* (effective for audits of group financial statements for periods beginning on or after December 15, 2009); ISA 600 (Revised), *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)* (effective for audits of group financial statements for periods beginning on or after December 15, 2023). *See also* AU–C Section 600, *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)* (standard adopted by the AICPA's Auditing Standards Board (''ASB'')).

[29] Under ISA 600, group audits are audits of ''group financial statements'' consisting of at least two ''components.'' Group audits generally are performed by a ''group engagement team'' and one or more ''component auditors'' and may involve a single firm or multiple firms.

[30] *See, e.g.,* Koninklijke Ahold N.V. (Royal Ahold), A. Michiel Meurs, Cees van der Hoeven, Johannes Gerhardus Andreae, and Ture Roland Fahlin, SEC Accounting and Auditing Enforcement Release (''AAER'') No. 2124 (Oct. 13, 2004); Lernout & Hauspie Speech Products, SEC AAER No. 1729 (Mar. 4, 2003); In re Parmalat Finanziara, S.p.A, SEC AAER No. 2065 (July 28, 2004); see also Michael J. Jones, ed., Creative Accounting, Fraud and International Accounting Scandals (2011) (describing, in Part B, 58 high-profile accounting scandals across 12 countries, including the Royal Ahold and Parmalat cases).

[31] *See* paragraph 7 of IAASB, Invitation to Comment, Enhancing Audit Quality in the Public Interest: A Focus on Professional Skepticism, Quality Control and Group Audits (Dec. 2015); see also IFIAR, 2017 Survey of Inspection Findings (Mar. 8, 2018), at 10 (showing group audits among the inspection themes with frequent findings in 2014–2017); IAASB, Work Plan for 2015–2016: Enhancing Audit Quality and Preparing for the Future (Dec. 2014), at 7 (''Concern [with ISA 600] has been expressed about: [t]he extent of the group auditor's involvement in the work of the component auditor . . .; [c]ommunication between the group auditor and the component auditor; [a]pplication of the concept of component materiality; [i]dentifying a component in complex situations; and [w]ork effort of the component auditor.'').

Meanwhile, the PCAOB has observed through its oversight activities that, after the PCAOB and IAASB adopted their own standards on risk assessment, some audit firms, particularly some of the largest firms that work extensively with other auditors, revised their policies, procedures, and guidance (''methodologies'') for using other auditors. The PCAOB has also observed differences among firms' methodologies, for example, in their approaches to determining whether the firm's participation in an audit is sufficient for the firm to serve as lead auditor.

The PCAOB has also noted through its oversight activities that some audit firms have applied advances in technology to various aspects of the audit, including the supervision of engagement team members and other communications.[32] The PCAOB has taken these practice developments into account in formulating the amendments.

Observations From Audit Inspections and Enforcement Cases

This section discusses observations based on PCAOB audit inspections and PCAOB and SEC enforcement cases. PCAOB staff has inspected the work of auditors who use other auditors, such as by reviewing the scope of work performed by the other auditor, the planning and instructions provided to the other auditor, and the degree of supervision (including review) of the other auditor. The PCAOB has also inspected the work of other auditors, such as by conducting inspections abroad and reviewing work performed by non-U.S. auditors at the request of a U.S.-based lead auditor. In some cases, PCAOB staff inspected the work performed by both the lead auditor and other auditors on the same audit. In many cases, but not always, the lead auditor was a U.S. firm while the other auditor was located in another jurisdiction. In addition, in 2019 the PCAOB established a ''target team'' of staff who performed inspection procedures across inspected firms. The team focused on U.S.-based multi-location audits and on issuer audits at annually inspected firms in which the U.S. firm was not the lead auditor.[33]

Other Auditors

PCAOB inspections staff has observed significant audit deficiencies in the work performed by other auditors, including noncompliance with the lead auditor's instructions and failure to communicate significant accounting and auditing issues to the lead auditor. Deficiencies have also been identified in other auditors' compliance with PCAOB standards governing a variety of audit procedures.[34]

These failures in audit performance occurred in critical audit areas that are frequently selected for inspection, including revenue, accounts receivable, internal control over financial reporting, and accounting estimates including fair value measurements. For example, in several instances, other auditors failed to perform sufficient procedures in auditing the revenue of a company's business unit, including with respect to evaluating the business unit's revenue recognition policy, testing the occurrence of revenue, and testing the operating effectiveness of the business unit's controls over revenue. In recent years, there have been some indications of decreasing inspection-observed deficiencies, as discussed below.

The Board in its enforcement cases has made similar findings about failures in audit performance. In one case, the Board found that an other auditor failed to perform audit procedures and to exercise supervisory responsibilities in accordance with PCAOB standards.[35] In another case, an other auditor failed to exercise due professional care and failed to obtain sufficient audit evidence for the audit work on accounts receivable.[36] In a more recent case, other auditors failed to exercise due professional care, respond adequately to a known significant risk, and obtain sufficient appropriate audit evidence, and they misrepresented their work in communications with the lead auditor.[37]

Lead Auditor

Over the years, there have been numerous observations from inspections and from enforcement cases where the lead auditor failed, under existing PCAOB standards, to appropriately determine the sufficiency of its participation in an audit to warrant serving as lead auditor. These failures occurred at large and small firms, domestic and international. Among the most egregious findings, lead auditors failed to perform an audit or participated very little in the audit, and instead issued an audit report on the basis of procedures performed by other auditors.[38] In these audits, the auditor failed to appropriately determine that it could serve as the lead auditor when all or a substantial portion of the financial statements were audited by another auditor. In two SEC enforcement cases, one firm failed to perform any analysis,[39] and another firm failed to perform an adequate analysis,[40] under AS 1205 regarding the sufficiency of its participation to serve as lead auditor.

There also have been findings in which the lead auditor failed to assess, or adequately assess, the qualifications of other auditors' personnel who participated in the audit. For example, PCAOB oversight activities have revealed situations in which the other auditors' personnel lacked the necessary industry experience or knowledge of PCAOB standards and rules (including independence requirements), SEC rules, and the applicable financial reporting framework to perform the work requested by the lead auditor.[41] Other examples identified through PCAOB and SEC oversight activities include audits in which: (i) the lead auditor failed to ascertain whether the other auditors, each of whom played a substantial role in the audit,[42] were registered with the PCAOB;[43] (ii) the

[32] *See* PCAOB, *Spotlight: Data and Technology Research Project Update* (May 2020), at 4–5 (noting that some firms have applied technology and developed tools to ''improve communications between the auditor and the company or among members of the engagement team (including other auditors), track information received during the audit, automate the documentation of procedures performed, and facilitate the efficiency of supervisory review.'').

[33] *See* PCAOB, Spotlight: Staff Update and Preview of 2019 Inspection Observations (Oct. 8, 2020).

[34] *See, e.g.,* 2016 Proposal at 16–17.

[35] *See In the Matter of Akiyo Yoshida, CPA,* PCAOB Release No. 105–2014–024 (Dec. 17, 2014). Unless otherwise indicated, the enforcement cases discussed in this section were settled proceedings.

[36] *See In the Matter of Wander Rodrigues Teles,* PCAOB Release No. 105–2017–007 (Mar. 20, 2017).

[37] *See* In the Matter of Ricardo Agustín García Chagoyán, José Ignacio Valle Aparicio, and Rubén Eduardo Guerrero Cervera, PCAOB Release No. 105–2018–021 (Oct. 30, 2018).

[38] For findings in PCAOB enforcement cases, see, for example, In the Matter of Michael T. Studer, CPA, P.C. and Michael T. Studer, CPA, PCAOB Release No. 105–2012–007 (Sept. 7, 2012), and In the Matter of Bentleys Brisbane Partnership and Robert John Forbes, CA, PCAOB Release No. 105–2011–007 (Dec. 20, 2011). Some of the standards violated in the enforcement cases cited in this release were predecessor standards to current PCAOB standards. The descriptions of inspection findings in this release are based on certain accounting firm inspection reports (portions of which are available on the PCAOB's website) and on the PCAOB's experience with inspecting firms.

[39] *See* BDO Canada LLP (f/k/a BDO Dunwoody LLP), SEC AAER No. 3926 (Mar. 13, 2018).

[40] *See KPMG Inc.,* SEC AAER No. 3927 (Mar. 13, 2018).

[41] *See, e.g.,* In the Matter of Gregory & Associates, LLC, and Alan D. Gregory, CPA, PCAOB Release No. 105–2019–018 (Aug. 21, 2019).

[42] *See* PCAOB Rule 2100, *Registration Requirements for Public Accounting Firms* (providing that any firm that plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker, or dealer must be registered with the Board); *see also* PCAOB Rule 1001(p)(ii), *Definitions of Terms Employed in Rules* (defining the phrase ''play a substantial role in the preparation or furnishing of an audit report'').

[43] *See, e.g., BDO Canada LLP,* SEC AAER No. 3926; *KPMG Inc.,* SEC AAER No. 3927.

lead auditor failed to obtain, review, and retain the results of the other auditor's procedures relating to risks; [44] (iii) the lead auditor failed to instruct the other auditor to perform an audit in accordance with PCAOB standards; [45] (iv) the lead auditor failed to supervise the other auditors or provide specific instructions to them, including detailed audit plans, appropriate modifications to audit plans based on identified risks, the audit objectives to be accomplished, or the need to maintain proper documentation; [46] (v) the lead auditor failed to adequately supervise the work of foreign audit staff in circumstances in which the engagement partner did not speak, read, or write the language used by the foreign staff; [47] and (vi) the lead auditor failed to adequately analyze whether it could serve as the principal auditor, relied on the work of an other auditor that was not registered with the PCAOB, and failed to determine whether the other auditor's work complied with PCAOB auditing standards.[48] In recent years, there have been indications of increased involvement by some firms in the supervision of other auditors, as discussed below.

Divided-Responsibility Audits

As noted above, audits in which the lead auditor divides responsibility with one or more other accounting firms are relatively uncommon.[49] For example, division of responsibility between auditors might occur for an equity method investment or a late-year acquisition of a company audited by another auditor.

Evolution of Inspection Findings

As noted above, some firms, particularly larger firms affiliated with global networks, have increased their supervision of other auditors in light of other standards. In recent years, some larger U.S. firms have made further changes to their audit methodologies, perhaps in response to deficiencies identified by PCAOB inspections, enforcement cases by regulators, and ongoing rulemaking developments. Specifically, some firms have encouraged a greater level of supervision by the lead auditor, such as frequent comprehensive communications with other auditors and review of other auditors' work papers in the areas of significant risk.

There have been some indications from PCAOB inspections that these firms' revisions to methodologies may have contributed to a decline in inspection-observed audit deficiencies at the firms' foreign affiliates with respect to work performed at the lead auditor's request.[50] In 2014, for example, PCAOB inspections staff observed a decrease in the number of significant audit deficiencies in work performed by other auditors.[51] Since 2014, the rate of deficiencies has fluctuated but remained below the 2013 level. Thus, the changes to the methodologies of some firms appear to have contributed to some improvements in the quality of audits.

In 2019, some of the Board's inspections focused on certain topics in audits involving other auditors, including planning and risk assessment, determining the appropriateness of serving as lead auditor, and communications between the lead auditor and other auditors. The inspectors observed improved audit quality when the lead auditor and other auditors communicated regularly and consistently. They also observed areas for improvement, including the documentation of required procedures, reporting of certain audit participants, and compliance with independence requirements.[52]

Reasons To Improve Auditing Standards

The increasing globalization of business, especially among large public companies, has led to expanded use of other auditors and increasingly significant roles for other auditors within the audit. When other auditors participate in an audit, it is important for investor protection that the engagement partner and, in turn, lead auditor assure that the audit is performed in accordance with PCAOB standards and that sufficient appropriate evidence is obtained through the combined work of the lead auditor and other auditors to support the lead auditor's opinion in the audit report on the company's consolidated financial statements. Among other things, this means that the lead auditor should be appropriately involved in the audit so that the work of all audit participants is properly planned and supervised, the results of the work are properly evaluated, and the lead auditor is in a position to conclude that the financial statements are presented fairly in all material respects. Lack of adequate lead auditor planning or supervision can result in deficient audits.

As noted above, some firms have made changes to their audit methodologies regarding the use of other auditors. However, other firms that have not made significant improvements to their methodologies concerning the planning and supervision of audits involving other auditors may have greater risk of lower quality audits when they use other auditors.

Additionally, observations from PCAOB oversight activities indicate that further improvements are needed. PCAOB staff continues to identify deficiencies in the work of other auditors in critical audit areas, deficiencies that lead auditors had not identified or sufficiently addressed. In some cases, these deficiencies occurred even when lead auditors did not violate existing requirements related to the use of other auditors, for example, if the lead auditor performed the procedures described in AS 1205 but did not identify these deficiencies. Such findings indicate that investor protection could be improved by, among

[44] *See In the Matter of Ron Freund, CPA,* PCAOB File No. 105–2009–007 (Jan. 26, 2015), at 1 (Board order summarily affirming hearing officer's finding of violation and imposition of sanction) (finding a violation of AU 543.12b, which was reorganized by the PCAOB in March 2015 as AS 1205.12b, and which required that ''the principal auditor must obtain, and review and retain, . . . [a] list of significant fraud risk factors, the auditor's response, and the results of the auditor's related procedures . . . .'').

[45] *See BDO Canada LLP,* SEC AAER No. 3926.

[46] *See, e.g.,* Anderson Bradshaw PLLC, Russell Anderson, CPA, Sandra Chen, CPA, and William Denney, CPA, SEC AAER No. 3856 (Jan. 26, 2017); Sherb & Co., LLP, Steven J. Sherb, CPA, Christopher A. Valleau, CPA, Mark Mycio, CPA, and Steven N. Epstein, CPA, SEC AAER No. 3512 (Nov. 6, 2013).

[47] *See, e.g.,* In the Matter of Acquavella, Chiarelli, Shuster, Berkower & Co., LLP, PCAOB Release No. 105–2013–010 (Nov. 21, 2013); In the Matter of David T. Svoboda, CPA, PCAOB Release No. 105–2013–011 (Nov. 21, 2013).

[48] *See In the Matter of Morgan & Company LLP,* PCAOB Release No. 105–2021–002 (Mar. 30, 2021).

[49] According to PCAOB staff analysis of Form AP filings with the PCAOB, lead auditors currently divide responsibility with another auditor in about 40 issuer audits per year. Form AP filings in 2021, 2020, 2019, and 2018 disclosed 36, 41, 37, and 42 divided-responsibility audits, respectively.

[50] For data regarding deficiencies in audits that involve other auditors, see discussion below.

[51] *See* PCAOB, *Staff Inspection Brief: Information about 2017 Inspections,* Vol. 2017/3 (Aug. 2017), at 7. The observed decrease is in comparison to the rate of deficiencies in certain inspected work in 2011, 2012, and 2013, when inspections staff, in each year respectively, identified significant audit deficiencies in about 32, 38, and 42 percent of the inspected work performed for lead auditors by non-U.S. members of the six largest global networks. *See Audit Committee Dialogue,* PCAOB Release No. 2015–003 (May 7, 2015), at 9 (graph entitled ''Deficiencies in Non-U.S. Referred Work''). Because issuer audit engagements and aspects of those engagements are selected for inspection based on a number of risk-related and other factors, the deficiencies included in inspections reports are not necessarily representative of the inspected firms' issuer audit engagement practice.

[52] See PCAOB, Spotlight: Staff Update and Preview of 2019 Inspection Observations (Oct. 8, 2020), at 5–6.

other things, increased involvement in, and evaluation of, the work of other auditors by the lead auditor.

Areas for Improvement

To enhance audit practice among all firms using other auditors, the Board identified the following areas for improvement in the current standards:

- *Applying a risk-based supervisory approach.* Applying a risk-based supervisory approach to the lead auditor's oversight of other auditors' work should result in more appropriate involvement by the lead auditor in audits involving other auditors. Unlike the Board's standards for determining the scope of multi-location audit engagements and general supervision of the audit, which require more audit attention to areas of greater risk, the existing standard for using the work of other auditors does not explicitly require the lead auditor to tailor its planning and oversight of other auditors for the associated risks. Applying a risk-based supervisory approach will direct the lead auditor's attention to the areas of greatest risk.
- *Providing additional specificity.* Providing additional specificity for the lead auditor's application of the principles-based supervisory requirements of PCAOB standards to the supervision of other auditors should help address the unique aspects of supervising other auditors. Additional specificity should also help the lead auditor assure that its participation in the audit is sufficient for it to carry out its responsibilities and issue an audit report based on sufficient appropriate evidence.
- *Taking into account recent changes in auditing practice.* Revising PCAOB auditing standards to take into account recent changes that some firms have implemented to make their auditing practices more rigorous for audits that involve other auditors should make those improved practices more uniform across all accounting firms and enable the PCAOB to enforce more rigorous provisions across all firms.

Because of the lead auditor's central role in an audit involving multiple firms, the amendments adopted by the Board seek to strengthen the existing requirements and impose a more uniform approach to the lead auditor's oversight of other auditors' work. These improvements are intended to increase the lead auditor's involvement in and evaluation of the work of other auditors generally, improve communication among the lead auditor and other auditors, enhance the ability of the lead auditor to prevent or detect deficiencies in the work of other auditors, and thus facilitate improvements in the quality of audits involving other auditors and promote investor protection.

Comments on the Reasons for Standard Setting

A number of commenters on the proposing releases broadly expressed support for enhancing PCAOB standards for using the work of other auditors and referred-to auditors, or stated that the proposed rulemaking would lead to improvements in audit quality. Some of the same commenters and others supported the Board's objective of establishing requirements for overseeing other auditors' work that are risk-based and more closely aligned with the Board's risk assessment standards than the existing standards are. Some commenters supported updating PCAOB standards in light of, among other things, changes in the business environment, company structure, accounting firm and network structure, regulation, and financial reporting, and the increased prevalence of audits involving other auditors. Some other commenters supported providing a more uniform approach to the lead auditor's supervision of other auditors. However, in the view of one commenter, some of the root causes of poor audit performance are not obvious, they have specific effects that are hard to isolate, and not all can be remedied by auditors and the PCAOB.

Although commenters generally supported applying a risk-based approach to the lead auditor's oversight of other auditors' work, some commenters on the proposing releases expressed concerns about certain aspects of the amendments and their economic impact. Some recommended further improvements to the proposed amendments. In the view of some commenters, the amendments should include additional direction in certain areas, be more scalable and better aligned with the risk-based approach, and provide more latitude for the lead auditor to exercise professional judgment, *e.g.,* in determining the nature, timing, and extent of supervisory activities. The Board's consideration of the comments received is discussed further in this document.

In adopting the amendments, the Board took into account the comments received on the proposing releases. Based on information available to the Board—including the current regulatory baseline, observations from the Board's oversight activities, academic literature, and comments—the Board believes that investors will benefit from strengthened and clarified auditing standards in this area. While the Board does not expect that the revisions to the standards will (or ever could) entirely eliminate audit deficiencies in this area, the revisions will clarify the auditor's responsibilities, align the applicable requirements with the PCAOB's risk-based supervisory standards, and improve the quality of audits.

Overview of Final Rules

The amendments the Board adopted are intended to strengthen the existing requirements and impose a more uniform approach to the lead auditor's supervision of other auditors.[53] As discussed in more detail in this document, they are designed to increase the lead auditor's involvement in, and evaluation of, the work of other auditors, enhance the lead auditor's ability to prevent or detect deficiencies in the work of other auditors, and facilitate improvements in the quality of the work of other auditors. In addition, the Board adopted a new auditing standard that will apply when the lead auditor divides responsibility for an audit with another accounting firm. The key aspects of the amendments and new standard include:

- *Planning the audit.* AS 2101, *Audit Planning,* as amended [54] will provide that:
- In audits involving other auditors or referred-to auditors, the engagement partner should determine whether the participation of his or her firm is sufficient for the firm to carry out the responsibilities of a lead auditor and to report as such on the company's financial statements.[55] The amendments also describe considerations for making the sufficiency determination. (AS 2101.06A)
- In audits involving referred-to auditors, the Board has established that participation of the engagement partner's firm is ordinarily not sufficient for it to serve as lead auditor if more than 50 percent of the assets or revenues are audited by referred-to auditors. (AS 2101.06A)

[53] The amendments apply to audits of issuers, as defined in Section 2(a)(7) of Sarbanes-Oxley, 15 U.S.C. 7201(7), and also to audits of brokers and dealers, as defined in Sections 110(3) and (4) of Sarbanes-Oxley, 15 U.S.C. 7220(3)–(4).

[54] The amendments to AS 2101 and AS 1201 appear in the main body of each standard and in Appendix A of AS 2101. As originally proposed, most of the amendments to these standards would have appeared in a new Appendix B of each standard. As adopted, the provisions that would have appeared in Appendix B are instead integrated in the main body of the standards. *See* 2021 SRC at 9.

[55] Under the amended standard, in an integrated audit of financial statements and internal control over financial reporting (''ICFR''), the lead auditor's participation in the audit of ICFR must also be sufficient to provide a basis for it to serve as the lead auditor of ICFR. (AS 2101.06C)

• Another amended PCAOB standard, AS 1220, *Engagement Quality Review,* will expressly require that the engagement quality reviewer for the audit review the engagement partner's determination about the sufficiency of his or her firm's participation in the audit to serve as lead auditor. (AS 1220.10a)

• In audits that involve work performed by other auditors regarding locations or business units, the lead auditor's involvement (through planning and performing audit procedures and supervising other auditors) should be commensurate with the risks of material misstatement associated with those locations or business units. (AS 2101.06B)

• When determining the engagement's compliance with independence and ethics requirements in audits involving other auditors, the lead auditor should:

• Understand the other auditor's knowledge of SEC independence requirements and PCAOB independence and ethics requirements (''independence and ethics requirements''), and experience in applying the requirements. (AS 2101.06Da)

• Obtain and review written affirmations [56] regarding (1) the other auditor's policies and procedures regarding independence and ethics requirements and, if there are none, a description of how it determines its compliance; (2) the other auditor's compliance with independence and ethics requirements, which also describe the nature of any instances of non-compliance; and (3) a description of all relationships between the other auditor and the audit client or persons in financial reporting oversight roles that may reasonably be thought to bear on independence. (AS 2101.06Db)

• Inform the other auditor of changes that affect determining compliance with independence and ethics requirements and are relevant to the other auditor's affirmations and descriptions. (AS 2101.06Dc(1))

• Request that the other auditor update its affirmations and descriptions to reflect any changes in circumstances. (AS 2101.06Dc(2))

• If the other auditor would play a substantial role in the audit,[57] the lead auditor may use the other auditor only if the other auditor is registered with the PCAOB. (AS 2101.06G)

• With respect to the other auditor's knowledge, skill, and ability, the lead auditor should:

• Understand the knowledge, skill, and ability of the other auditor's engagement team members who assist the lead auditor with planning and supervision. (AS 2101.06Ha)

• Obtain a written affirmation from the other auditor that its engagement team members possess the knowledge, skill, and ability to perform the assigned tasks. (AS 2101.06Hb)

• Determine that it can communicate with other auditors and gain access to their audit documentation. (AS 2101.06Hc)

• In multi-tiered audits, a first other auditor may assist the lead auditor in performing procedures with respect to second other auditors concerning independence and ethics requirements; the knowledge, skill, and ability of the second other auditors; and communications with second other auditors. (AS 2101.06E, .06I)

• *Supervising the audit.* AS 1201, *Supervision of the Audit Engagement,* as amended will require that the lead auditor:

• Supervise other auditors under the Board's standard on supervision of the audit engagement (AS 1201) when the lead auditor assumes responsibility for the other auditor's work (*i.e.,* does not divide responsibility for the audit with an other auditor).[58]

• Inform other auditors of the scope of their work and the following items with respect to the work requested to be performed: identified risks of material misstatement associated with the location or business unit, tolerable misstatement, and the amount (if determined) below which misstatements are clearly trivial and do not need to be accumulated. (AS 1201.08)

• Obtain and review the other auditor's written description of procedures to be performed and discuss with, and communicate in writing to, the other auditor any needed changes to the planned procedures. (AS 1201.09–.10)

• Obtain and review a written affirmation from the other auditor as to whether the other auditor has performed work in accordance with the lead auditor's instructions, and, if the other auditor has not performed such work, a description of the nature of, and explanation of the reasons for, the instances where the work was not performed in accordance with the instructions, including (if applicable) a description of the alternative work performed. (AS 1201.11)

• Direct other auditors to provide specified documentation concerning work performed.[59] (AS 1201.12)

• Determine whether the other auditor performed the work as instructed and whether additional audit evidence needs to be obtained. (AS 1201.13)

• Evaluate, in a multi-tiered audit where the lead auditor seeks assistance from a first other auditor to perform any of the above responsibilities with respect to second other auditors,[60] the first other auditor's supervision of second other auditors. (AS 1201.14)

• *Dividing responsibility for the audit.* When the lead auditor divides responsibility for the audit with another accounting firm, new auditing standard AS 1206, *Dividing Responsibility for the Audit with Another Accounting Firm,* will provide that:

• The lead auditor should determine that audit procedures are performed to test and evaluate the consolidation or combination of the financial statements of the business units audited by the referred-to auditor into the company's financial statements. (AS 1206.03)

• The lead auditor should communicate in writing to the referred-to auditor the plan to divide responsibility for the audit. (AS 1206.04)

• The lead auditor should obtain written representation from the referred-to auditor that it is independent under PCAOB and SEC requirements and duly licensed to practice. (AS 1206.05)

• The lead auditor may divide responsibility for the audit with a referred-to auditor only if:

• The referred-to auditor represents it performed its audit and issued its report in accordance with PCAOB standards;

• The lead auditor determines that the referred-to auditor is familiar with the relevant financial reporting requirements and PCAOB standards;

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[56] The terms ''obtain,'' ''retain,'' ''written,'' or ''in writing'' do not mandate that documents related to the audit be paper-based. *See* paragraph .04 of AS 1215, *Audit Documentation* (audit documentation may be in the form of paper, electronic files, or other media).

[57] *See* PCAOB Rule 1001(p)(ii) (defining the phrase ''play a substantial role in the preparation or furnishing of an audit report''), including conforming amendments for the term ''lead auditor'' as revised in this document.

[58] The work of engaged assistants from outside the firm (*e.g.,* leased staff, secondees, staff from a shared service center) will be governed by the same standards that apply to the work of assistants inside the firm (*e.g.,* firm partners, shareholders, employees), including the supervision provisions in AS 1201.05–.06. *See, e.g.,* Staff Audit Practice Alert No. 6, at 7–11 (July 12, 2010) (discussing engaging assistants from outside the firm).

[59] Under PCAOB standards, the lead auditor's necessary extent of review of the other auditors' documentation depends on the necessary extent of supervision by the lead auditor (*see* AS 1201.06). The documentation to be reviewed by the lead auditor should include, at a minimum, the documentation described in AS 1215.19.

[60] For a more detailed discussion of multi-tiered audits, see discussion below.

• The referred-to auditor is registered with the PCAOB if it played a substantial role in the audit or its report is with respect to a business unit that is itself an issuer, broker, or dealer;

• In case of the conversion of business unit financial statements from another financial reporting framework to the financial reporting framework of the company, the lead auditor or the referred-to auditor audits the conversion adjustments, and the lead auditor indicates in its report which auditor was responsible for that. (AS 1206.06)

• In situations where the lead auditor is unable to divide responsibility, the lead auditor should: plan and perform procedures necessary to issue an auditor's report that expresses an opinion; qualify or disclaim an opinion; or withdraw from the engagement. (AS 1206.07)

• The lead auditor's audit report must indicate clearly the division of responsibility, identify the referred-to auditor by name and refer to its report, and disclose the magnitude of the portion of the financial statements (or internal controls over financial reporting) audited by the referred-to auditor. (AS 1206.08)

• If the referred-to auditor's report is not a standard (*i.e.,* unqualified) report, the lead auditor should make reference to the departure, unless the matter is clearly trivial to the financial statements. (AS 1206.09)

• *Additional amendments.* The amendments the Board adopted also:

• Rescind AS 1205, *Part of the Audit Performed by Other Independent Auditors.*

• This change, in effect, requires lead auditors to supervise (directly or through other auditors) work performed by other auditors under AS 1201 in all cases, unless the lead auditor divides responsibility for the audit with another (referred-to) auditor, in which case AS 1206 applies.

• Revise AS 1015, *Due Professional Care in the Performance of Work,* to emphasize that other auditors are responsible for performing their work with due professional care.

• Revise AS 1215 to expressly state that, in an audit involving other auditors, an other auditor must retain documentation of the work that it performs, and that its documentation is subject to the requirements related to subsequent modification.

• Amend Appendix B, *Audit Evidence Regarding Valuation of Investments Based on Investee Financial Results,* of AS 1105, *Audit Evidence,* to distinguish it from requirements involving other auditors or referred-to auditors, by using a more descriptive term, ''investee auditor'' (including in situations involving equity method investees), and making certain other clarifying edits.

• Include definitions of key terms ''engagement team,'' ''lead auditor,'' ''other auditor,'' and ''referred-to auditor'' in AS 2101.

• Revise other PCAOB standards and rules to conform to these amendments.

Additional Discussion of the Amendments and New Standard

Introduction

The changes to PCAOB standards the Board adopted were intended to improve the quality of audits that involve one or more public accounting firms, and accountants at those firms, that are outside the accounting firm issuing the auditor's report. This section discusses in more detail amendments to auditing standards and a new auditing standard adopted by the Board relating to the use of other auditors and dividing responsibility for the audit with another accounting firm (collectively, ''amendments'' or ''final amendments''). The Board adopted these amendments after taking into account public comments that were received on the requirements proposed in 2016 and in response to supplemental requests for comment issued in 2017 and 2021 as discussed in more detail below in connection with the amendments.

In brief, the amendments include:

• Amendments to AS 1015, *Due Professional Care in the Performance of Work;* AS 1105, *Audit Evidence;* AS 1201, *Supervision of the Audit Engagement;* AS 1215, *Audit Documentation;* AS 1220, *Engagement Quality Review;* and AS 2101, *Audit Planning;*

• A new auditing standard, AS 1206, *Dividing Responsibility for the Audit with Another Accounting Firm,* for situations in which the accounting firm issuing the auditor's report divides responsibility for the audit with another accounting firm; and

• Other related amendments to PCAOB auditing standards.

In general, the amendments extend the risk-based supervision requirements of PCAOB auditing standards to all situations in which other auditors participate in an audit, unless the lead auditor divides responsibility for the audit with another auditor.[61] The amendments also strengthen the requirements and provide additional direction to the lead auditor about its responsibilities. For the relatively infrequent situations when the lead auditor divides responsibility for the audit with another auditor, the amendments strengthen the existing approach under PCAOB standards.

The amendments also rescind AS 1205, *Part of the Audit Performed by Other Independent Auditors,* and AI 10, *Part of the Audit Performed by Other Independent Auditors: Auditing Interpretations of AS 1205.*

The amendments to AS 1201 and AS 2101 appear in the main body of each standard and in Appendix A of AS 2101. As originally proposed, most of the amendments to these standards would have appeared in a new Appendix B of each standard. As proposed in the 2021 SRC, the provisions that would have appeared in Appendix B were instead relocated to the body of the two standards (AS 1201 and AS 2101) to enhance the readability and usability of the amendments and to better facilitate their implementation. One commenter on the 2021 SRC commended the PCAOB for relocating the amendments from Appendix B of each standard to the body of the standards, stating that it improves usability and clarity.

Definitions of Engagement Team, Lead Auditor, Other Auditor, and Referred-to Auditor

See paragraphs .A3–.A6 of AS 2101

To operationalize the requirements included in this release, the amendments define the terms ''engagement team,'' ''lead auditor,'' ''other auditor,'' and ''referred-to auditor,'' as discussed below. A commenter on the 2021 SRC recommended alignment of the terminology used in the PCAOB's standards with that of the International Auditing and Assurance Standards Board (''IAASB'') and the American Institute of Certified Public Accountants Auditing Standards Board (''ASB''). After considering the comment, the Board adopted the definitions substantially as proposed, because they are designed for the requirements of this rulemaking, which differ from those in the analogous IAASB and ASB standards. These definitions are included in Appendix A of AS 2101 and referenced in other PCAOB standards, where applicable.

Definition of ''Engagement Team''

See paragraph .A3 of AS 2101

Under existing PCAOB standards, the engagement partner is responsible for the engagement and its performance, including the proper supervision of the work of engagement team members and

[61] For situations involving auditors of the financial statements of the company's investees, see discussion below.

for compliance with PCAOB standards.[62] The term ''engagement team'' is commonly used in PCAOB auditing standards but has not been defined. The definition of ''engagement team'' that the Board adopted in AS 2101 will apply to AS 1201 and AS 2101, as amended, and to the new standard, AS 1206. The term specifies, for example, the persons subject to the lead auditor's supervision under AS 1201, which standard will now apply to the relationship between the lead auditor and all other auditors for whose work the lead auditor assumes responsibility, including those currently covered by rescinded AS 1205.

The Board adopted a revised definition to conform to previous amendments to the Board's standards and to address 2021 SRC comments received. Subparagraph (2) of the revised definition conforms to terminology used in Appendix C, *Supervision of the Work of Auditor-Employed Specialists,* of AS 1201, which the Board adopted in 2018.[63] As revised, the definition of ''engagement team'' includes:

(1) Partners, principals, and shareholders of, and accountants[64] and other professional staff employed or engaged by, the lead auditor or other accounting firms who perform audit procedures on an audit or assist the engagement partner in fulfilling his or her planning or supervisory responsibilities on the audit pursuant to AS 2101 or AS 1201; and

(2) Specialists who, in connection with the audit, (i) are employed by the lead auditor or an other auditor participating in the audit and (ii) assist that auditor in obtaining or evaluating audit evidence with respect to a relevant assertion of a significant account or disclosure.[65]

The definition excludes:

(1) The engagement quality reviewer and those assisting the reviewer (to which AS 1220 applies);

(2) Partners, principals, and shareholders of, and other individuals employed or engaged by, another accounting firm in situations in which the lead auditor divides responsibility for the audit with the other firm under AS 1206; and

(3) Engaged specialists.[66]

In general, the engagement team, as defined, encompasses the engagement partner and individual accountants who perform procedures to obtain and evaluate audit evidence, as well as specialists employed by one of the participating audit firms who perform audit procedures. The following table illustrates the distinction between engagement team members and parties who are not engagement team members under the definition the Board adopted.

Examples of engagement team members	Examples of parties who are NOT engagement team members
• Engagement partner • Personnel from the engagement partner's firm[68] who perform audit procedures on the audit • Personnel of accounting firms and individual accountants outside the engagement partner's firm who perform audit procedures on the audit (supervised under AS 1201)[72] • A firm professional in the national office or centralized group in the firm (including within the firm's network) who performs audit procedures on the audit or assists in planning or supervising the audit	• Auditor-engaged specialists.[67] • Engagement quality reviewer and those assisting the reviewer.[69] • Appendix K or filing reviewer.[70] • Service auditors of a third-party service organization.[71] • A firm professional who performs a contemporaneous quality control function (e.g., internal inspection or quality control review) but does not perform audit procedures or help plan or supervise the audit work • Individuals employed or engaged by the company being audited, such as a company's internal auditors, a company's specialists, and a company's consultants.[73]

A commenter on the 2021 SRC asked whether the Board considered the potential ramifications of the difference between the proposed definition of ''engagement team'' and the analogous term ''audit engagement team'' in SEC independence requirements. One commenter acknowledged that the Board addressed this question in the 2016 Proposal and recommended that the Board add an explanatory footnote to the rule text in the definition of ''engagement team.''

The Board purposely adopted a definition of ''engagement team'' that is narrower than the definition of ''audit engagement team'' in the SEC's independence rules. *See* Rule 2–01(f)(7)(i) of Regulation S–X, 17 CFR 210.2–01(f)(7)(i). In addition to the individuals within the Board's definition of ''engagement team,'' the definition in SEC Rule 2–01(f)(7)(i) also encompasses certain individuals who are not included in the Board's definition, such as the engagement quality reviewer. The Board noted that neither the definition of ''engagement team'' nor any other amendments in this

[62] *See* AS 1201.03.

[63] *See* Amendments to Auditing Standards for Auditor's Use of the Work of Specialists, PCAOB Release No. 2018–006 (Dec. 20, 2018).

[64] *See* paragraph (a)(ii) of PCAOB Rule 1001, *Definitions of Terms Employed in Rules,* which defines the term ''accountant.'' (This footnote referring to Rule 1001 is included in the definition of ''engagement team'' appearing in AS 2101.A3.)

[65] The final amendments add the phrase ''in connection with the audit'' and replace ''assist their firm'' with ''assist that auditor'' for clarity.

[66] AS 1210, *Using the Work of an Auditor-Engaged Specialist,* establishes requirements that apply to the use of specialists engaged by the auditor's firm. Appendix A of AS 1105 sets forth the auditor's responsibilities for using the work of a specialist employed or engaged by the company. (This footnote referring to AS 1210 and AS 1105 is included in the definition of ''engagement team'' appearing in AS 2101.A3.)

[67] The term ''engagement partner's firm'' is used in this rulemaking to describe the registered public accounting firm issuing the auditor's report. (*See* first note to AS 2101.A4.)

[68] *See* AS 1210.

[69] AS 1220 applies to those persons.

[70] Reviewers under Appendix K of SEC Practice Section (''SECPS'') Section 1000.45, *SECPS Member Firms with Foreign Associated Firms That Audit SEC Registrants,* would not be considered members of the engagement team. Those reviewers, similar to the engagement quality reviewer, do not make decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team.

[71] AS 2601, *Consideration of an Entity's Use of a Service Organization,* sets forth the auditor's responsibilities with respect to using the work of service auditors who issue reports on the controls of a third-party service organization.

[72] This includes personnel of accounting firms described in rescinded AS 1205 as other auditors for whose work the ''principal auditor'' (which is the term used in AS 1205) assumes responsibility. By including these individuals in the engagement team, the amendments expand the lead auditor's responsibility to apply the risk-based supervision approach to all accounting firms involved in the audit, except in situations in which the lead auditor divides responsibility for the audit with another accounting firm. (If the lead auditor divides responsibility for the audit with another accounting firm, that firm is considered a referred-to auditor under AS 1206.)

[73] Because of their roles at the company, the work of individuals employed or engaged by the company is not subject to supervision under AS 1201; they are not considered members of the engagement team under the adopted definition. PCAOB standards include requirements regarding the auditor's use of work performed by some of these individuals. *See, e.g.,* AS 1105, Appendix A; AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements;* AS 2605, *Consideration of the Internal Audit Function.*

release affect the definitions within, or the applicability of, the independence requirements of the SEC.

Another commenter expressed concern that the definition of ''engagement team'' for purposes of AS 2101, AS 1201, and AS 1206 could have implications for other standards. This commenter cited other auditing standards outside of these three standards that use the term ''engagement team'' and encouraged the PCAOB to revisit these instances to determine the implications for those standards of the new definition. The Board noted that, although the definition is not repeated across all other PCAOB standards, the term ''engagement team'' in other PCAOB standards has the same meaning as the defined term in AS 2101.A3.[74]

Finally, a couple of commenters recommended clarifying the definition of ''engagement team'' with respect to auditor-employed specialists. One commenter suggested specifying that auditor-employed specialists can be engagement team members only if they participate in the audit, while the other suggested changing the proposed reference to ''their firm'' to instead employ the defined terms ''lead auditor'' and ''other auditor.'' The Board made corresponding clarifying edits to subparagraph (2) of the definition. Apart from making these changes and certain minor clarifying edits, the Board adopted the definition of ''engagement team'' as proposed in the 2021 SRC.

Definition of ''Lead Auditor''

See paragraph .A4 of AS 2101

The amendments introduce the new term ''lead auditor'' for both types of scenarios addressed by this rulemaking: supervising other auditors' work under AS 1201, and dividing responsibility for the audit with another accounting firm under AS 1206.[75] The term ''lead auditor'' replaces the term ''principal auditor'' that is currently used in several PCAOB standards.[76] Under the amendments, the term ''lead auditor'' means the firm issuing the auditor's report, the engagement partner of that firm, and other personnel of that firm (or their functional equivalents) who perform planning or supervisory responsibilities from that firm.

The definition is key to this rulemaking because it identifies the firm and individuals who are responsible for carrying out the requirements under the amendments:

Lead auditor—

(a) The registered public accounting firm [77] issuing the auditor's report on the company's financial statements and, if applicable, internal control over financial reporting; and

(b) The engagement partner and other engagement team members who both:

(1) Are partners, principals, shareholders, or employees of the registered public accounting firm issuing the auditor's report (or individuals who work under that firm's direction and control and function as the firm's employees); and

(2) Assist the engagement partner in fulfilling his or her planning or supervisory responsibilities on the audit pursuant to AS 2101 or AS 1201.[78]

Note: The registered public accounting firm issuing the auditor's report is also referred to in this standard as ''the engagement partner's firm.''

Note: Individuals such as secondees [79] who work under the direction and control of the registered public accounting firm issuing the auditor's report would function as the firm's employees.

Several commenters on the 2021 SRC indicated that the definition of ''lead auditor'' was sufficiently clear. One commenter on the 2021 SRC stated there was lack of clarity about the use of the term ''lead auditor'' in circumstances when the audit does not involve other auditors or referred-to auditors. This commenter suggested that the proposed standard explicitly acknowledge either: (1) the registered public accounting firm that issues the auditor's report is always the lead auditor, including when there are no other auditors or referred-to auditors or (2) the registered public accounting firm that issues the auditor's report is only a lead auditor if the audit involves other auditors or referred-to auditors (and therefore modifications would need to be made to the definition of engagement team).

In the proposing releases, the Board stated that the term ''lead auditor'' would apply to these scenarios: supervising other auditors under AS 1201 and dividing responsibility for the audit under proposed AS 1206. In addition, the amendments already clearly indicate that the term will apply when other auditors or referred-to auditors are involved in the audit.[80]

The description of ''secondee'' was added to the proposed amendments in the 2021 SRC.[81] Several commenters said that the description was too prescriptive, given the flexibility in location where audit professionals may work, as demonstrated throughout the COVID–19 pandemic. Most of these commenters were supportive of its inclusion as an example in the rule text, but recommended that ''secondee'' not be defined so narrowly. They also suggested that individuals who work at shared service centers be included as an example in the rule text given the continued increase in their use. In addition, one commenter said that it did not agree with the Board that at all times (now and in the future) individuals who work at shared service centers will work under the direction and control of and function as employees of the lead auditor firm.

After considering the comments received, the Board is revising footnote 5 of AS 2101.A4 to be similar to revised Form AP staff guidance [82] on secondees. Those revisions recognized that, because of the recent advances in technology and remote work arrangements, location should not necessarily be a factor in determining whether secondees work under the direction and control of the firm and function as their employees. Further, the Board agrees that under the amendments secondees from other accounting firms and employees of

[74] *See* proposed rule text for further amendments made to PCAOB standards in order to clarify that the term ''engagement team'' has the same meaning (or, where applicable, analogous meaning) as the defined term in AS 2101.A3.

[75] The amendments rescind AS 1205, which uses the term ''principal auditor.''

[76] *See* Other Related Amendments to PCAOB Auditing Standards.

[77] *See* paragraph (r)(i) of PCAOB Rule 1001, which defines the term ''registered public accounting firm.'' This footnote is included within the definition appearing in AS 2101.A4.

[78] *See* paragraph .05a of AS 2301, *The Auditor's Responses to the Risks of Material Misstatement,* which describes making appropriate assignments of significant engagement responsibilities. *See also* AS 1015.06, according to which ''[e]ngagement team members should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability.'' This footnote is included within the definition appearing in AS 2101.A4.

[79] For this purpose, the term ''secondee'' refers to an individual participating in a secondment arrangement in which, for at least three consecutive months, (1) a professional employee of an accounting firm in one country works for a registered public accounting firm that is located in another country and is issuing an auditor's report, and (2) the professional employee performs audit procedures with respect to entities and their operations in that other country and does not perform more than de minimis audit procedures in relation to entities or business operations in the country of his or her employer. A secondee can be either physically located in that other country or working through a remote work arrangement. This footnote is included within the definition appearing in AS 2101.A4.

[80] *See, e.g.,* AS 2101.04.

[81] *See* 2021 SRC at A1–16 (proposed footnote 5 of AS 2101.A4).

[82] *See* Staff Guidance, Form AP, Auditor Reporting of Certain Audit Participants, and Related Voluntary Audit Report Disclosure Under AS 3101, The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion (Dec. 17, 2021).

shared service centers who both work under the firm's direction and control (as with other individuals who work in the role of firm employees) *and* assist the engagement partner in fulfilling planning or supervisory responsibilities on the audit are part of the lead auditor.

Regarding the comment that individuals at shared service centers would not always function as ''employees of the lead auditor's firm,'' the amendments do not provide that all shared service center staff would function as employees of the lead auditor firm. For example, staff at a shared service center could be working on the audit under the direction and control of an audit firm other than the lead auditor. In that case, the individuals at the shared service center would function as employees of the other auditor, not the lead auditor firm.

The Board considered these comments and determined that the proposed definition of lead auditor is sufficiently clear and, except for the revision to the footnote regarding secondees discussed above, adopted it as proposed in the 2021 SRC.

Definitions of ''Other Auditor'' and ''Referred-to Auditor''

For the Term ''Other Auditor,'' See Paragraph .A5 of AS 2101, and For the Term ''Referred-to Auditor,'' See Paragraph .A6 of AS 2101

Several existing PCAOB standards use the term ''other auditor'' to encompass any auditors outside the lead auditor that participate in an audit, regardless of whether the lead auditor supervises them under AS 1201, assumes responsibility for their work under AS 1205, or makes reference to them under AS 1205.[83] The amendments define two terms: ''other auditor,'' and ''referred-to auditor.'' These definitions are as follows:

Other auditor—

(a) A member of the engagement team who is not:

(1) A partner, principal, shareholder, or employee of the lead auditor or

(2) An individual who works under the direction and control of the registered public accounting firm issuing the auditor's report and functions as that firm's employee; and

(b) A public accounting firm, if any, of which such engagement team member is a partner, principal, shareholder, or employee.

Referred-to auditor—

A public accounting firm, other than the lead auditor, that performs an audit of the financial statements and, if applicable, internal control over financial reporting, of one or more of the company's business units [84] and issues an auditor's report in accordance with the standards of the PCAOB to which the lead auditor makes reference in the lead auditor's report on the company's financial statements and, if applicable, internal control over financial reporting.[85]

Several commenters on the 2021 SRC indicated that the definition of ''other auditor'' was sufficiently clear, and no commenters expressed concern about the definition of ''referred-to auditor.'' Some commenters on the 2016 Proposal asked whether the term ''referred-to auditor'' is aligned with the term ''principal accountant'' used by the SEC. The Board noted that the definitions it adopted do not affect the applicability of SEC terms or rules to audits involving other auditors or referred-to auditors, including the definition of ''principal accountant.''

In addition, one commenter on the 2016 Proposal stated that the only difference between the definitions of other auditor and referred-to auditor appears to be divided responsibility, but noted the definitions are substantially different. The Board notes that these definitions reflect differences in lead auditor responsibilities with respect to the other auditor and referred-to auditor. As noted above, under the amendments, the term ''other auditor'' encompasses both the individuals participating in the audit and their firm. In contrast, the lead auditor divides responsibility for the audit with the referred-to auditor, which issues the auditor's report on the financial statements (and, if applicable, internal control over financial reporting) of a company's business unit. Thus, the term ''referred-to auditor'' applies only to the firm because the firm issues an auditor's report in the divided-responsibility situation.

The Board considered the comments and determined that the definitions of ''other auditor'' and ''referred-to auditor'' are sufficiently clear and adopted them as proposed in the 2021 SRC.

Planning the Audit

See Amendments to AS 2101

In general, the amendments to AS 2101 carry forward and update certain requirements of AS 1205 and include certain procedures to be performed by the lead auditor.

This section discusses planning requirements in AS 2101 for audits in which the lead auditor supervises the work of other auditors in accordance with AS 1201. It also discusses certain planning requirements, which appear in AS 2101, for audits in which the lead auditor divides responsibility for the audit with referred-to auditors in accordance with AS 1206.[86] This section on planning requirements addresses the following topics:

- Serving as the lead auditor in an audit that involves other auditors or referred-to auditors (determining sufficiency of participation);
- Other auditors' compliance with independence and ethics requirements;
- PCAOB registration status of other auditors;
- Knowledge, skill, and ability of and communications with other auditors; and
- Determining locations or business units at which audit procedures should be performed.

Serving as the Lead Auditor in an Audit That Involves Other Auditors or Referred-to Auditors (Determining Sufficiency of Participation)

See Paragraphs .06A–.06C of AS 2101

Under AS 2101 as amended, in audits involving other auditors or referred-to auditors, the engagement partner should determine whether the participation of his or her firm is sufficient for the firm to carry out the responsibilities of a lead auditor and to report as such on the company's financial statements. The considerations for determining the sufficiency of the firm's participation apply to audits in which the lead auditor supervises other auditors' work, divides responsibility for the audit with another accounting firm, or both. In contrast, the 50-percent participation threshold (discussed below) applies only to audits in which the lead auditor divides responsibility for the audit with another accounting firm.

[83] For example, AS 1205 uses the term ''other auditors'' to describe accounting firms whose work the lead auditor uses or with which it divides responsibility for the audit. By contrast, AS 1215.18–.19 uses the term ''other auditors'' when describing offices of the firm issuing the audit report and other firms participating in the audit.

[84] The term ''business units'' includes subsidiaries, divisions, branches, components, or investments. This footnote is included within the definition appearing in AS 2101.A6.

[85] *See* AS 1206, which sets forth the lead auditor's responsibilities regarding dividing responsibility for the audit of the company's financial statements and, if applicable, internal control over financial reporting, with a referred-to auditor. This footnote is included within the definition appearing in AS 2101.A6.

[86] In addition, this document discusses requirements for the lead auditor in AS 1206 relating to the referred-to auditor's (1) compliance with the SEC independence and PCAOB independence and ethics requirements, (2) registration pursuant to the rules of the PCAOB, and (3) knowledge of the relevant accounting, auditing, and financial reporting requirements.

Planning is not a discrete phase of an audit, but rather is a continual and iterative process that continues until the completion of the audit.[87] Therefore the engagement partner is expected to revisit his or her determination of the sufficiency of the lead auditor's participation throughout the audit if circumstances change. This may occur, for example, because of changes due to business combinations, divestitures, or other events that could affect the audit plan or allocation of work between the lead auditor and other auditors.

Considerations for Serving as the Lead Auditor

See First Paragraph of .06A(a–c) of AS 2101

AS 1205, which is being rescinded, provides that when significant parts of the audit are performed by other auditors (''other auditors'' and ''referred-to auditors'' under the amendments), the principal auditor (''lead auditor'' under the amendments) must decide whether the principal auditor's own participation is sufficient to enable it to serve as the principal auditor and issue the auditor's report on the company's financial statements. Under AS 1205.02, when determining whether the firm sufficiently participates in the audit, the principal auditor is required to consider, among other things, (i) the materiality of the portion of the financial statements audited in comparison with the portion audited by other auditors; (ii) the extent of the auditor's knowledge of the overall financial statements; and (iii) the importance of the components audited by the auditor in relation to the enterprise as a whole.

The amendments to AS 2101 strengthen the existing requirement for determining the sufficiency of participation by: (i) extending the determination requirement to *all* audits involving other auditors and referred-to auditors,[88] not just audits that have been covered by AS 1205; (ii) imposing the determination requirement specifically on the engagement partner; and (iii) specifying certain considerations, based on risk and other factors, that should be taken into account in making the determination.

In general, the sufficiency requirement is intended to increase the likelihood that the firm issuing the auditor's report (*i.e.,* the lead auditor) meaningfully participates in the audit. The Board believes that compliance with this requirement should benefit all audits involving other auditors and referred-to auditors, not only audits that have been covered by AS 1205. Imposing the sufficiency requirement on the engagement partner is consistent with the engagement partner's existing responsibilities under PCAOB standards for planning the audit[89] and for assigning tasks to and supervising engagement team members.[90]

The amendments require that, when making the sufficiency determination, the engagement partner take into account the following, in combination, *i.e.,* the engagement partner should take into account all three considerations:

- *Importance*—The importance of the locations or business units for which the engagement partner's firm performs audit procedures in relation to the financial statements of the company as a whole, considering quantitative and qualitative factors;
- *Risk*—The risks of material misstatement associated with the portion of the company's financial statements for which the engagement partner's firm performs audit procedures, in comparison with the portions for which the other auditors perform audit procedures or the portions audited by the referred-to auditors; and
- *Extent of supervision*—The extent of the engagement partner's firm's supervision of the other auditors' work for portions of the company's financial statements for which the other auditors perform audit procedures.[91]

Of these three considerations, only the risk consideration was included in the 2016 Proposal. Although it was intended to encompass both quantitative and qualitative aspects of participation, some commenters on the 2016 Proposal viewed a determination based solely on risk as too narrow, and some viewed it as primarily quantitative. Commenters expressed concern that it might result in denying a firm the ability to serve as lead auditor if it performed procedures only at the corporate headquarters and not at the company's operating units (which were audited by other auditors), even if that firm is otherwise best positioned to serve as lead auditor.

The importance consideration was added in the 2017 SRC, after considering comments received on the 2016 Proposal. The addition was intended to more expressly address circumstances in which the lead auditor audits the locations or business units where the primary financial reporting decisions are made and consolidated financial statements are prepared, even though those locations or business units might not constitute a significant portion of the company's operations.[92] A number of commenters on the 2017 SRC commented favorably on the importance consideration, noting generally that it would more directly enable the engagement partner to consider both quantitative and qualitative factors when determining the sufficiency of participation.

Some commenters on the 2017 SRC viewed the sufficiency determination based on the two proposed considerations (importance and risk) as too restrictive for certain audits. Examples provided by the commenters included companies with highly dispersed management and financial reporting functions, especially those whose operations, headquarters, and financial reporting functions are primarily outside the company's corporate domicile. Commenters stated that applicable laws and regulations might require that the company's audit report be issued by a firm located in the jurisdiction where the company is domiciled, regardless of how much of the audit is performed by that auditor compared to other auditors. To address this issue, the commenters suggested providing additional considerations for the sufficiency-of-participation determination, including the firm's extent of supervision.

The third consideration (extent of supervision) was added in the 2021 SRC. This addition was designed to allow for a more comprehensive determination of the prospective lead auditor's involvement.

Several commenters on the 2021 SRC generally supported the proposed addition of the consideration related to the extent of the engagement partner's firm's supervision of other auditors' work. Some of these comments also agreed that the sufficiency-of-participation determination by the engagement partner should be a risk-based assessment involving quantitative and qualitative considerations. One commenter on the 2021 SRC stated its understanding that an engagement partner may determine that his or her firm can serve as lead auditor by adjusting the extent of his or her firm's supervision of the other auditors' work to overcome instances where the other

[87] *See* AS 2101.05.

[88] Below, this document discusses further conditions to be met in order to divide responsibility with another accounting firm.

[89] *See* AS 2101.03.

[90] *See* AS 1015.06.

[91] In a multi-tiered audit (*see* AS 1201.14), the consideration regarding extent of supervision applies only to the firm's supervision of a first other auditor and any other auditor that is supervised directly by the firm. *See* discussion of multi-tiered audits below.

[92] *See* 2017 SRC at 9.

auditors are performing audit procedures for significant parts of the audit. This same commenter said it would be helpful for the Board to acknowledge that an auditor who performs relatively fewer audit procedures on global business units can still be considered the lead auditor based on legal or regulatory requirements and his or her firm's supervision of other auditors.

Other commenters continued to have concerns similar to those expressed in 2017 (*e.g.,* regarding jurisdictional matters) even with the additional consideration. These commenters suggested that the Board provide further considerations, and therefore additional flexibility, for the determination.

The Board believes the three considerations will enable engagement partners to address the multitude of scenarios encountered in practice when determining their firms' sufficiency of participation. With regard to the comments on jurisdictional challenges posed by laws and regulations, if the auditor's report is required to be issued by a firm licensed in a certain jurisdiction, under the amendments that firm could serve as lead auditor (subject to certain conditions such as necessary extent of supervision), even if it does not perform audit procedures on many of the company's subsidiaries. In addition, a firm could obtain additional staff to perform audit procedures under the firm's direction and control functioning as the firm's employees in order to be able to serve as the lead auditor. Adding more considerations, as some commenters suggested, could increase the risk that the firm issuing the auditor's report does not meaningfully participate in the audit, and thus was the ''lead auditor'' in name only.[93] Permitting such arrangements would not achieve the intent of the amendments.

One commenter pointed out that with respect to divided-responsibility situations, the lead auditor often may not be able to fully apply certain considerations (*e.g.,* the concept of ''supervision'' in AS 2101.06Ac). The Board noted that in a divided-responsibility situation, the overall principles of .06Aa–b are the relevant considerations, because the consideration in .06Ac does not by its terms address referred-to auditors. AS 2101.06Ac states that the ''extent of the engagement partner's firm's supervision of the *other auditors'* work for portions of the company's financial statements for which the *other auditors* perform audit procedures'' (emphasis added).

After considering the comments received, the Board adopted the requirements substantially as proposed.[94] The engagement partner will take into account the three considerations (importance, risk, and supervision) in combination to determine whether the full range of his or her firm's involvement in the audit constitutes sufficient participation to serve as the lead auditor.[95]

Fifty-Percent Participation Threshold for Divided-Responsibility Audits

See Second Paragraph of .06A of AS 2101

For divided-responsibility audits,[96] the Board determined to adopt, as proposed, amendments to reflect the following ''50-percent threshold,'' which applies *in addition* to two of the three considerations for determining the sufficiency of participation discussed above (importance and risk):[97]

> [T]he participation of the engagement partner's firm ordinarily is not sufficient for it to serve as lead auditor if the referred-to auditors, in aggregate, audit more than 50 percent of the company's assets or revenues.

This 50-percent threshold is intended to reduce the likelihood that the lead auditor divides responsibility with an accounting firm or firms that audit a majority of the company's assets or revenue, and is consistent with the Board's approach to reinforcing the accountability of the lead auditor in audits involving other auditors.[98] Including this threshold in the amendments also preserves a longstanding practice of the profession.

One commenter on the 2021 SRC asserted (with respect to the 50-percent threshold for divided-responsibility audits) that a firm's analysis as to whether it can reasonably serve as lead auditor must consider all the facts and circumstances, rather than simply consolidated assets or revenues. Another commenter asked that the wording of the 50-percent threshold be revised when referred-to auditors are involved because there are scenarios in which either assets *or* revenues audited by the referred-to auditor are greater than the assets or revenues audited by the lead auditor, such as when consolidated revenues of the company overall are nominal, but the amounts that do exist are audited by the referred-to auditor. This commenter believed that use of the term ''or'' will allow for false positives and restrict the ability of lead auditors to make reference to referred-to-auditors.

After considering the comments, the Board adopted the 50-percent threshold as proposed. That threshold creates a presumption (not a bright line test) that the lead auditor will not divide responsibility with an accounting firm or firms that audit a majority of the company's assets or revenues.[99] A firm could overcome the presumption and serve as lead auditor in exceptional situations, involving, for example, late-year acquisitions or other unanticipated events or conditions that increase the portion of assets or revenues audited by referred-to auditors beyond the 50-percent threshold. Under PCAOB standards, the firm would need to document why its participation in the audit was sufficient to serve as lead auditor, including how the firm satisfied the criteria based on the importance of the locations or business units it audited and risks of material misstatement associated with the portion of the company's financial statements that it audited.

The description of the 50-percent threshold in the amendments differs from the analogous description in the Corp. Fin. Manual because the PCAOB description uses terminology consistent with the amendments (whereas the

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[93] Such arrangements are sometimes referred to as ''letterbox audits.''

[94] Footnote 4B to AS 2101.06Ac has been revised to add the following sentence: ''*See also* AS 1201.07, which states that for engagements that involve other auditors, AS 1201.08–.15 further describe procedures to be performed by the lead auditor with respect to the supervision of the work of other auditors, in conjunction with the required supervisory activities set forth in AS 1201.''

[95] The lead auditor's analysis of its sufficiency of participation should be documented pursuant to AS 1215.06, which requires, among other things, that audit documentation contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached.

[96] According to PCAOB staff analysis of Form AP filings with the PCAOB, lead auditors currently divide responsibility with another auditor in about 40 issuer audits per year. Form AP filings in 2021, 2020, 2019, and 2018 disclosed 36, 41, 37, and 42 divided-responsibility audits, respectively.

[97] This release, below, discusses further conditions to be met in order to divide responsibility with another accounting firm.

[98] The threshold is similar to a quantitative threshold that appears in staff guidance set forth in the Financial Reporting Manual of the SEC Division of Corporation Finance (''Corp. Fin. Manual''). The Corp. Fin. Manual provides that a lead auditor is generally expected to have audited or assumed responsibility for at least 50 percent of the assets and revenues of the consolidated entity. *See* SEC, Division of Corporation Finance, Financial Reporting Manual, Section 4140.1.

[99] Notably, while the comparison based on the importance of the locations or business units and risks of material misstatement associated with the portion of the financial statements is made singly (*i.e.,* with regard to the engagement partner's firm's participation), the additional threshold based on assets and revenue is made with regard to all referred-to auditors in the aggregate.

Corp. Fin. Manual's formulation uses terminology consistent with pre-amendment standards) and because the PCAOB description is written in the negative: ''in an audit that involves referred-to auditors . . . the participation of the engagement partner's firm ordinarily is *not sufficient for it to serve as lead auditor if* the referred-to auditors, in aggregate, audit more than 50 percent of the company's assets or revenues.''

Supervising Based on Risk

See Paragraph .06B of AS 2101

In some audits, the lead auditor might decide to increase the extent of its supervision of other auditors' work to provide additional support for the sufficiency-of-participation determination. Although this practice would contribute to the lead auditor's participation to some extent, performing additional supervisory procedures with respect to the other auditors does not, by itself, relieve the lead auditor of its own obligation to perform meaningful audit procedures in the audit.

The amendments do not allow an audit firm to serve as lead auditor when all of the audit procedures are performed by other auditors, even under the lead auditor's supervision. A determination to serve as lead auditor under the amendments needs to be supported by a combination of supervision of other auditors by the lead auditor and the lead auditor's performance of audit procedures.

In particular, the Board believes that a lead auditor, as the firm that issues the audit report, should perform audit procedures to a meaningful extent even if the company's business operations and financial reporting functions are located in a different country than the lead auditor. The following are examples [100] of such procedures:

- *Procedures related to risks pervasive to the financial statements,* such as risk assessment procedures directed to risks to the consolidated financial statements as a whole.[101]

- *Procedures related to the consolidated financial statements,* such as audit procedures regarding the period-end financial reporting process [102] for the consolidated financial statements, and evaluation of the presentation of the consolidated financial statements, including the disclosures.[103]

- *Other procedures related to the overall evaluation of audit results,* such as performing overall analytical review procedures; [104] evaluating accumulated misstatements; [105] evaluating identified control deficiencies; [106] evaluating the qualitative aspects of the overall financial statements, including potential management bias; [107] evaluating conditions related to fraud risk assessment; [108] and evaluating the sufficiency and appropriateness of the audit evidence obtained. [109]

In these examples, the lead auditor would not need to perform these procedures exclusively. Rather, it could ask other auditors for assistance with some aspects of the above procedures, such as obtaining audit evidence relating to the business units assigned to the other auditors.

In the amendments, AS 2101.06B, which is intended to be a reminder concerning existing requirements, provides that in an audit that involves other auditors performing work regarding locations or business units, the involvement of the lead auditor (through a combination of planning and performing audit procedures and supervision of other auditors) should be commensurate with the risks of material misstatement associated with those locations or business units. The requirement draws from existing requirements in AS 1201, AS 2101, and AS 2301, which require greater involvement in areas of greater risk.[110] No commenters opposed the requirement.

The Board adopted this provision as proposed.

Sufficiency Considerations in an Integrated Audit of Financial Statements and Internal Control Over Financial Reporting

See Paragraph .06C of AS 2101

In the amendments, AS 2101.06C states that in an integrated audit of a company's financial statements and its internal control over financial reporting (''ICFR'') that involves other auditors or referred-to auditors, the lead auditor of the financial statements must participate sufficiently in the audit of ICFR to provide a basis for serving as the lead auditor of ICFR. Only the lead auditor of the financial statements can be the lead auditor of ICFR. This amendment incorporates an existing requirement from AS 2201 regarding the sufficiency of the lead auditor's participation in the integrated audit of financial statements and ICFR.[111] No commenters objected to this requirement, and the Board adopted it as proposed.

Other Auditors' Compliance With Independence and Ethics Requirements

See Paragraphs .06D and .06F of AS 2101 [112]

The amendments to AS 2101 relating to auditor independence and ethics requirements build on the existing, overarching responsibility of the auditor to determine compliance with independence and ethics requirements.[113] The amendments are designed to position the lead auditor to identify matters that warrant further attention when determining the other auditor's compliance with those requirements. Commenters on the proposing releases generally agreed that the lead auditor should perform procedures regarding other auditors' compliance with these requirements. Several commenters, however, raised questions about specific aspects of the provisions, which are discussed below.

Understanding the Other Auditor's Knowledge and Experience; Obtaining an Affirmation About Policies and Procedures, Changes in Circumstances

See Paragraphs .06Da, .06Db(1), and .06Dc(1)–(2) of AS 2101

The Board adopted the amendments discussed in this section as they were proposed in the 2021 SRC. The

[100] In addition, the lead auditor would perform audit procedures with respect to locations or business units selected for testing that the lead auditor assigned to itself.

[101] *See* AS 2110.59b.

[102] *See* AS 2301.41.

[103] *See* paragraphs .30–.31 of AS 2810, *Evaluating Audit Results.*

[104] *See* AS 2810.07–.09.

[105] *See* AS 2810.10–.23.

[106] *See* AS 2201.62–.70.

[107] *See* AS 2810.24–.27.

[108] *See* AS 2810.28–.29.

[109] *See* AS 2810.32–.36.

[110] *See* footnote 4C of AS 2101.06B, which cites, as examples, AS 1201.06, AS 2101.11 (''The auditor should assess the risks of material misstatement to the consolidated financial statements associated with the location or business unit and correlate the amount of audit attention devoted to the location or business unit with the degree of risk of material misstatement associated with that location or business unit.''), and, more generally, AS 2301.

[111] *See* conforming amendments to AS 2201.C8, .C10, and .C11. The terminology in these paragraphs has been updated to align with the amendments, without changing the intent of the requirements in these paragraphs.

[112] *See* discussion below that, in multi-tiered audits, proposed AS 2101.06E would allow the lead auditor to seek assistance from the first other auditor in performing the procedures described in proposed AS 2101.06D. *See also* AS 1206 for requirements relating to audits involving referred-to auditors.

[113] *See* AS 2101.06b (requiring the auditor to ''[d]etermine compliance with independence and ethics requirements'' at the beginning of the audit and to reevaluate the determination throughout the audit). As noted above, the use of ''independence and ethics requirements'' in this release refers to PCAOB independence and ethics requirements and SEC independence requirements.

amendments in AS 2101.06D require the lead auditor to perform certain procedures ''in conjunction with determining compliance with'' independence and ethics requirements, to carry out its responsibilities pursuant to the existing requirements in paragraph .06b of AS 2101.

AS 2101.06Da requires that the lead auditor obtain an understanding of the other auditor's knowledge of independence and ethics requirements and its experience in applying the requirements. AS 2101.06Db(1) requires that the lead auditor obtain from the other auditor and review a written affirmation [114] as to whether the other auditor has policies and procedures that provide reasonable assurance that it maintains compliance with independence and ethics requirements. If the other auditor does not have such policies and procedures, the lead auditor is required to obtain from the other auditor and review a written description of how the other auditor determines its compliance with the independence and ethics requirements.

The amendments require the lead auditor to (i) inform the other auditor of changes in circumstances of which the lead auditor becomes aware, and (ii) request that the other auditor update its affirmations and descriptions for changes in circumstances of which the other auditor becomes aware (including changes communicated by the lead auditor) and provide those documents to the lead auditor upon becoming aware of such changes.[115] These amendments are meant to provide the lead auditor with information necessary for it to reevaluate compliance with independence and ethics requirements.[116] Communications required by the amendments also reflect policies already adopted by a number of registered firms.

The Board notes that the nature and extent of the lead auditor's procedures for obtaining an understanding under paragraph .06Da will depend on the types of information available to the lead auditor about the other auditor. The following are examples of types of information that may be relevant to the lead auditor's understanding of the other auditor's knowledge of independence and ethics requirements, and the other auditor's experience in applying the requirements:

- The type, frequency, and substance of independence and ethics training that the other auditor provides to its personnel who participate in the audit;
- The other auditor's policies and procedures for ensuring that the firm and its personnel comply with independence and ethics requirements, including PCAOB Rule 3520, *Auditor Independence;* [117]
- The other auditor's process for determining that the other auditor, including the firm and its applicable personnel, does not have financial or employment relationships that might impair the lead auditor's independence on the audit; [118]
- The other auditor's process for obtaining timely information about the audit client and its affiliates from which the other auditor firm is required to maintain independence, including an understanding of all non-audit services initiated or about to be initiated for the audit client by the other auditor; [119] and
- Any business relationships between the other auditor (including the firm and its applicable personnel) and the audit client, or persons associated with the audit client in a decision-making capacity, such as officers, directors, or substantial stockholders.[120]

Sources of relevant information about the other auditor may differ depending, for example, on whether the lead auditor and other auditor are affiliated with the same network of accounting firms. In practice, some networks have procedures for sharing among select personnel of their member firms certain information about the results of internal or external inspections of the affiliates, conducted either by the network itself or by outside parties such as the PCAOB.

Commenters on the 2021 SRC generally supported the modifications made to proposed AS 2101.06D, including the requirement to obtain written affirmations from the other auditor about whether the other auditor's policies and procedures provide reasonable assurance of compliance with independence and ethics, and whether the other auditor is in compliance. However, some commenters asked the Board to modify the requirements for the written affirmation and noted that a firm's quality control assessment with respect to independence is done on an annual basis. These commenters recommended that the Board align the amendments in this rulemaking with those of the PCAOB's project regarding quality control standards.[121] In the view of one of these commenters, it was not the Board's intention to require the other auditor engagement team members to make their own conclusion about an aspect of their firm's quality control system relative to a particular engagement.

Even in circumstances when other auditor engagement team members rely on their firm's quality control system for independence and ethics compliance, the Board believes it is appropriate to require the lead auditor to request and obtain in the context of an audit an affirmation that the other auditor's firm has the necessary policies and procedures. In practice, audit engagement teams typically exchange information with their own firm's quality control function relating to compliance with certain independence and ethics requirements. However, if an other auditor does not have policies and procedures that provide reasonable assurance that it complies with such requirements, it is appropriate to require that the lead auditor request and obtain a description of how the other auditor determines its compliance with the independence and ethics requirements. The Board believes that this requirement is appropriate today and will remain appropriate after firms implement the IAASB's newly adopted International Standard on Quality Management 1 (''ISQM 1''), which will require firms that perform audits under IAASB standards to evaluate the effectiveness of its quality control system, or under PCAOB standards if the Board were to adopt a similar requirement.[122]

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[114] The final amendments use the term ''affirmation'' for certain communications within the engagement team (*see, e.g.,* AS 2101.06Db, AS 2101.06F, and AS 2101.06Hb), to better differentiate them from certain communications outside the engagement team, which are described in the amendments as ''representations'' (*see, e.g.,* AS 1206).

[115] *See* AS 2101.06Dc, which applies to all affirmations and descriptions required by paragraph .06Db.

[116] *See* note to AS 2101.06b regarding reevaluating compliance.

[117] See also QC 20, System of Quality Control for a CPA Firm's Accounting and Auditing Practice.

[118] *See* Rules 2–01(c)(1) and 2–01(c)(2) of Regulation S–X, 17 CFR 210.2–01(c)(1) and 17 CFR 210.2–01(c)(2).

[119] PCAOB and SEC independence rules define ''affiliate of the audit client.'' *See* PCAOB Rule 3501(a)(ii); Rule 2–01(f)(4) of Regulation S–X, 17 CFR 210.2–01(f)(4). For rules regarding the prohibition of non-audit services, see Rules 2–01(c)(4) and 2–01(b) of Regulation S–X, 17 CFR 210.2–01(c)(4) and 17 CFR 210.2–01(b); PCAOB Rule 3522, *Tax Transactions;* and PCAOB Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles. See also* PCAOB Rule 3521, *Contingent Fees.*

[120] *See* Rule 2–01(c)(3) of Regulation S–X, 17 CFR 210.2–01(c)(3).

[121] Concept Release: Potential Approach to Revisions to PCAOB Quality Control Standards, PCAOB Release No. 2019–003 (Dec. 17, 2019).

[122] The IAASB adopted ISQM 1 in December 2020, and it will become effective on December 15, 2022. *See* IAASB, ISQM 1, Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements (Dec. 17, 2020).

In addition, a couple of commenters suggested requiring that the lead auditor make the other auditor aware of PCAOB and SEC independence requirements that are relevant to the company.

The requirement for the lead auditor to obtain an understanding (pursuant to paragraph .06Da) is designed to assist the lead auditor in determining its course of action regarding the other auditor's independence and ethics compliance. For example, other auditors with less knowledge and experience may be less able to provide the information the lead auditor needs to determine compliance with independence and ethics requirements. The lead auditor may need to communicate PCAOB and SEC independence requirements to some other auditors (*e.g.,* those who are less familiar with the requirements) but not to others (*e.g.,* those who are more familiar with the requirements). The Board believes the amendments are sufficiently principles-based to allow the lead auditor to adjust its procedures according to the circumstances of the audit, including with respect to:

- Making other auditors aware of the relevant independence and ethics requirements for the audit engagement, including affirming compliance not only with respect to their audit client, but also with respect to any affiliates of that audit client;
- Confirming that the other auditors understand the requirements; and
- Considering whether additional information for other auditors is necessary regarding the independence and ethics requirements that are relevant to the audit engagement.

With respect to AS 2101.06Dc(1)–(2), one commenter stated that it is not necessary for other auditors to reaffirm in writing every update that is communicated by the lead auditor. The Board believes that an informative record of relevant matters is important for determining compliance with independence and ethics requirements. Auditor independence is critical for an effective audit; lack of independence can compromise the effectiveness of audit procedures performed by the other auditor. The amendments are designed to provide the lead auditor with timely information indicating that the other auditor's independence may be compromised, thus enabling the lead auditor to take any necessary action during the course of the audit.

Obtaining a Written Description of the Other Auditor's Covered Relationships

See Paragraph .06Db(2) of AS 2101

Under the amendments, the lead auditor should obtain from the other auditor and review a written description of all relationships between the other auditor and the audit client or persons in financial reporting oversight roles at the audit client [123] that may reasonably be thought to bear on independence pursuant to the requirements of paragraph (b)(1) of PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence.*[124] The requirement is designed to assist the lead auditor in obtaining information for determining compliance with SEC and PCAOB independence requirements and to facilitate auditor communications to the audit committee under Rule 3526. The amendments do not change the applicability of Rule 3526 to the lead auditor's representation, *including* with respect to unaffiliated firms.[125]

One commenter supported the proposed requirement, noting that PCAOB Rule 3526 requires communication only from the lead auditor to the audit committee. The commenter added that the proposed new requirement—with respect to the lead auditor determining an other auditor's compliance with independence and ethics requirements rather than simply inquiring about it (*e.g.,* under extant AS 1205)—aligns the responsibility to make such determination better with the required communication.

No commenters opposed this requirement, and the Board adopted it as proposed.

Obtaining a Written Affirmation About the Other Auditor's Compliance With Independence and Ethics Requirements

See Paragraph .06Db(3) of AS 2101

Under the amendments, the lead auditor should obtain from the other auditor and review a written affirmation as to whether the other auditor is in compliance with independence and ethics requirements with respect to the audit client, and if it is not in compliance, the lead auditor should obtain and review a written description of the nature of the instances of non-compliance. This requirement was originally introduced in the 2016 Proposal, to strengthen a requirement in AS 1205, which is being rescinded, to make inquiries concerning the other auditor's independence.[126] This provision was revised and clarified in the amendments proposed in the 2017 and 2021 SRCs to require in addition that the lead auditor obtain and review a description of the nature of the instances of any non-compliance.

One commenter on the 2021 SRC recommended that the Board modify the proposed requirement to also include the other auditor's conclusion regarding whether it is capable of exercising objective and impartial judgment on all issues encompassed in its work. In response, the Board noted that the lead auditor can determine its course of action based on the facts and circumstances of the audit engagement, without the Board prescribing a course of action in the amendments. Therefore, the Board did not make additional changes to this requirement and adopted it as proposed.

Following Up on Contrary Information

See Paragraph .06F of AS 2101

The amendments to AS 2101 direct the lead auditor to follow up on contrary information. The amendments provide that if the lead auditor becomes aware of information that contradicts the other auditor's affirmation or description (including information about changed circumstances), the lead auditor should investigate the circumstances and consider the reliability of the affirmation or description. Further, if, after such investigation, or based on the other auditor's affirmation or description, there are indications that the other auditor is not in compliance with independence and ethics requirements, the lead auditor should consider the implications for fulfilling its own responsibilities under AS 2101.06b and PCAOB Rules 3520 and 3526.

Two commenters on the 2021 SRC expressed concerns with the words ''investigate'' and ''investigation'' in the proposed amendments. The Board notes that the terms are used in other PCAOB auditing standards and generally refer to

[123] PCAOB Rule 3501, *Definitions of Terms Employed in Section 3, Part 5 of the Rules,* defines the terms ''audit client'' and ''financial reporting oversight role.'' The terms used in AS 2101.06Db(2) have the same meaning as defined in Rule 3501.

[124] Rule 3526 requires auditors to make certain communications to the audit committee of the audit client before accepting an initial engagement, and annually thereafter, including a description, in writing, of ''all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence.'' *See also* Staff Guidance, *Rule 3526(b) Communications with Audit Committees Concerning Independence* (May 31, 2019), which addresses questions that have arisen in practice regarding application of Rule 3526(b) in certain circumstances.

[125] *See Ethics and Independence Rule 3526, Communication with Audit Committees Concerning Independence,* PCAOB Release No. 2008–003 (Apr. 22, 2008), at 5 note 4, which states that the Board ''expects the primary auditor's report to either include any covered relationships of any secondary auditors *not affiliated with the firm* or state that it does not do so'' (emphasis added).

[126] *See* AS 1205.10b.

taking a closer look at a matter to determine a further course of action.[127] After considering the comments, the Board adopted this requirement as proposed.

Obtaining Information at the Individual or Firm Level

See Note to Paragraph .06D of AS 2101

The amendments include a note to AS 2101.06D stating that information required to be provided to the lead auditor under AS 2101.06D may cover the other auditor's firm and engagement team members who are partners, principals, shareholders, or employees of the other auditor firm.

Some commenters on the proposing releases questioned the practicability of applying the requirements to individual engagement team members. Further, one commenter on the 2021 SRC specifically asked for clarification regarding the level (*i.e.,* firm, individual, or both) at which the lead auditor is expected to apply the requirements in paragraph .06Da (obtaining an understanding of other auditors' knowledge and experience) *and* how to interpret the proposed note to paragraph .06D.

The definition of ''other auditor'' in the amended standards includes both an other auditor firm and individuals at that firm. The affirmations and descriptions required by the amendments could be prepared and provided by the other auditor firm and address all covered relationships. In our experience, firms typically have the necessary information available centrally, including information about processes for determining compliance with independence and ethics requirements, and about individuals at the firm, including their level of experience in applying the requirements. Obtaining from a firm a written affirmation or description that also encompasses relevant individuals at the firm would satisfy the requirement to obtain a written affirmation or description ''from the other auditor'' for those persons at that firm.

PCAOB Registration Status of Other Auditors

See Paragraph .06G of AS 2101

PCAOB Rule 2100, *Registration Requirements for Public Accounting Firms,* requires a public accounting firm to be registered with the PCAOB [128] if it: (a) prepares or issues any audit report with respect to any issuer, broker, or dealer or (b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker, or dealer.[129] However, there have been examples of firms that played a substantial role but were not registered with the PCAOB.[130]

The amendments provide that the lead auditor may use the work of an other auditor that plays a substantial role on the audit [131] only if the other auditor is registered with the PCAOB.[132] The provision is intended to promote compliance with Rule 2100 and thereby enhance audit quality, and it does not change the rule or the related definition of ''play a substantial role'' in Rule 1001(p)(ii). Several commenters supported the provision, and the Board adopted it as proposed.

With regard to registration requirements more broadly, one commenter suggested—as an alternative to requirements concerning independence and ethics, and concerning knowledge, skill, and ability—that the Board require all audit firms ''engaged in a public entit[y] assurance engagement'' to be registered with the PCAOB. In the commenter's view, this approach would provide a ''basis for consistent application [of PCAOB standards] for firms registered with the PCAOB.'' The Board is not taking the commenter's suggestion because simply requiring firms to register (beyond the current registration requirements) would not address the need for change identified in this rulemaking. The shortcoming of this approach is demonstrated by the inspection deficiencies and enforcement cases described above, which involve conduct by registered firms during audits involving other auditors.

Knowledge, Skill, and Ability of and Communications With Other Auditors

See Paragraphs .06H and .16 of AS 2101

Knowledge, Skill, and Ability of Other Auditors

See Paragraphs .06Ha–b and .16 of AS 2101

The amendments require that, with respect to each other auditor, the lead auditor obtain an understanding of the knowledge, skill, and ability of the other auditor's engagement team members who assist the lead auditor with planning or supervision, including their: experience in the industry in which the company operates; knowledge of the relevant financial reporting framework, PCAOB standards and rules, and SEC rules and regulations; and experience in applying the standards, rules, and regulations. The amendments also require the lead auditor to obtain a written affirmation from the other auditor that its engagement team members possess the knowledge, skill, and ability to perform their assigned tasks.[133]

PCAOB standards have long recognized the importance of technical training and proficiency of the personnel performing the audit.[134] These matters are particularly important for senior engagement personnel because of their role in planning the audit, supervising the work of other engagement team members, and making important professional judgments.

Under existing PCAOB standards, in situations where the lead auditor supervises an other auditor under AS 1201, the knowledge, skill, and ability of engagement team members with significant engagement responsibilities should be commensurate with the assessed risks of material misstatement.[135] In situations where the lead auditor uses the other auditor's work and report under AS 1205, the lead auditor [136] is required under existing standards to make inquiries concerning the professional reputation of the other auditor.[137]

[127] *See, e.g.,* paragraphs .17, .20–.21 of AS 2305, *Substantive Analytical Procedures* (investigation and evaluation of significant differences from expectations about assertions related to the financial statements).

[128] *See also* Section 102(a) of Sarbanes-Oxley, 15 U.S.C. 7212(a).

[129] An other auditor that is not registered with the PCAOB (regardless of whether such auditor is required to be registered with the PCAOB) is nonetheless subject to PCAOB authority when it acts as a person associated with a registered public accounting firm. *See* Section 2(a)(9) of Sarbanes-Oxley, 15 U.S.C. 7201(a)(9)); PCAOB Rule 1001(p)(i) (defining ''person associated with a public accounting firm''); *see also* Sections 104(c)(1), 105(b)(1), and 105(c)(4) of Sarbanes-Oxley, 15 U.S.C. 7214(c)(1), 15 U.S.C. 7215(b)(1), and 15 U.S.C. 7215(c)(4) (articulating that PCAOB authority extends to ''persons associated with a registered public accounting firm'' in connection with inspections, investigations, and sanctions, respectively).

[130] *See, e.g., In the Matter of WWC, P.C.,* PCAOB Release No. 105–2022–006 (Apr. 19, 2022); *BDO Canada LLP (f/k/a BDO Dunwoody LLP),* SEC AAER No. 3926 (Mar. 13, 2018); *KPMG Inc.,* SEC AAER No. 3927 (Mar. 13, 2018).

[131] *See* PCAOB Rule 1001(p)(ii).

[132] For audits in which the lead auditor divides responsibility for the audit with the referred-to auditor *see* AS 1206.06c in this document. *See also* discussion below.

[133] The written affirmation required by AS 2101.06Hb regarding the other auditor's engagement team members does not need to identify each member of the engagement team.

[134] *See, e.g.,* AS 1010, *Training and Proficiency of the Independent Auditor,* and paragraphs .11–.12 of QC 20, System of Quality Control for a CPA Firm's Accounting and Auditing Practice.

[135] *See* AS 2301.05a.

[136] ''Principal auditor'' is the term used in rescinded AS 1205.

[137] *See* AS 1205.10.

The amendments build on and strengthen the existing provisions. Compliance with these amendments is not limited to preliminary engagement activities and should be reevaluated with changes in circumstances. The amendments seek to apply a balanced and practical approach by focusing the lead auditor's attention primarily on the knowledge, skill, and ability of the more senior engagement team members of the other auditor.

Obtaining an understanding of the knowledge, skill, and ability of the other auditor's supervisory personnel is important for determining the extent of the lead auditor's supervision of the other auditor's work. As a practical matter, the knowledge, skill, and ability of the supervisory personnel include their experience in the company's industry and jurisdiction,[138] and knowledge of the relevant financial reporting framework, PCAOB standards and rules, and SEC rules and regulations. Lack of appropriate knowledge, skill, and ability by the other auditor's supervisory personnel can have an adverse effect on the overall quality of the audit.

Several commenters supported the proposed requirements, including the requirement to obtain a written affirmation from the other auditor that its engagement team members possess the knowledge, skill, and ability to perform their assigned tasks. One commenter asked the Board to consider providing that the lead auditor's procedures for obtaining an understanding of the knowledge, skill, and ability of the other auditor be scalable based on the considerations regarding sufficiency of participation in AS 2101.06A. The Board noted that the requirements in AS 2101.06A serve a different purpose: to increase the likelihood that the firm issuing the auditor's report meaningfully participates in the audit. The requirements regarding the knowledge, skill, and ability are designed to focus the lead auditor and other auditors on assigning qualified personnel at all levels of the audit engagement.

Another commenter suggested inserting a note after paragraph .06H that indicates the lead auditor's own experience working with the other auditor is relevant to the lead auditor's understanding of the other auditor's knowledge, skill, and ability. The Board agrees with the commenter that the lead auditor's own experience with the other auditor may be a source of information about the other auditor's knowledge, skill, and ability. However, the amendments are designed to be principles-based to accommodate a variety of scenarios in practice, whereby differing types of information about other auditors can be available to the lead auditor. Therefore, beyond requiring the written affirmation described above, the amendments do not prescribe a particular set of procedures or sources of information for obtaining an understanding of the other auditor's knowledge, skill, and ability. The amendments allow the lead auditor to determine the nature and extent of its procedures in this area. After considering the comments, the Board adopted the requirements as proposed.

The amendments also add an explanatory phrase, ''including relevant knowledge of foreign jurisdictions,'' to AS 2101.16's existing requirement that the auditor should determine whether specialized skill or knowledge is needed to perform appropriate risk assessments, plan or perform audit procedures, or evaluate audit results.[139] Identifying whether there is a need for specialized skill or knowledge is logically a prerequisite to evaluating whether someone has that skill or knowledge. For example, a lead auditor in its home jurisdiction may not have a sufficient understanding of the business practices or legal requirements of a foreign jurisdiction to be able to execute the audit effectively. In these cases, the lead auditor may want to consider whether to engage an other auditor (*e.g.,* from that jurisdiction) with relevant knowledge of the foreign jurisdiction to appropriately assess risk, plan or perform audit procedures, or evaluate audit results.

One commenter on the 2021 SRC stated that, if added focus on knowledge of foreign jurisdictions is needed, additional clarity should be provided as to when this knowledge is needed and how it should be obtained. Another commenter stated that consideration of relevant knowledge of foreign jurisdictions may be applicable only in certain circumstances but acknowledged the possible need for specialized knowledge of foreign jurisdictions because of the other auditor's knowledge of the regulatory environment.

Similar to AS 2101.06Ha–b, the amendment in AS 2101.16 allows the auditor to determine the nature and extent of its procedures when determining whether specialized skill or knowledge is needed on the audit. After considering the comments, the Board adopted the amendment as proposed.

Communication With Other Auditors

See Paragraph .06Hc of AS 2101

The amendments to AS 2101 require the lead auditor to determine, in connection with using the other auditor's work, that it is able to communicate with the other auditor and gain access to the other auditor's audit documentation. The requirement is intended to help the lead auditor in identifying and addressing any communication or access issues early in the audit. For example, the lead auditor would consider whether it can have meaningful two-way communication with the other auditor[140] and whether it needs to address any language differences. In another example, the lead auditor would consider whether it can access the other auditor's documentation remotely.

The amendment also is based on the existing provisions of PCAOB standards that require the lead auditor to have access to the other auditor's documentation and obtain, review, and retain certain portions of it. As with the existing requirements, the amendments allow the lead auditor flexibility in determining the means of access (*e.g.,* remotely or on-site).[141]

If the lead auditor cannot obtain sufficient appropriate audit evidence because of restrictions on communicating with the other auditor or accessing its documentation, a limitation on the scope of the audit may exist. Under PCAOB standards, these circumstances may require the lead auditor to qualify the audit opinion or disclaim an opinion.[142]

Those who commented on the proposed requirement in the 2016 Proposal and 2017 SRC viewed it as a clear requirement. Some commenters asked for examples of acceptable modes of communication between the lead auditor and the other auditor, and

[138] As discussed below, AS 2101.16 states that the auditor should determine whether specialized skill or knowledge is needed to perform appropriate risk assessments, plan or perform audit procedures, or evaluate audit results, and the amendments specify that such specialized skill or knowledge may include ''relevant knowledge of foreign jurisdictions.''

[139] *See* amended paragraph .16 of AS 2101, which provides that ''[t]he auditor should determine whether specialized skill or knowledge, including relevant knowledge of foreign jurisdictions, is needed to perform appropriate risk assessments, plan or perform audit procedures, or evaluate audit results.''

[140] *See, e.g.,* AS 2110.49–.53 (describing discussions among key engagement team members regarding risks of material misstatement).

[141] *See, e.g.,* rescinded AS 1205.12. *See also* AS 1215.18–.19.

[142] *See* AS 2810.35. *See also* paragraphs .05–.17 of AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances,* which contains requirements regarding audit scope limitations.

inquired whether email communication would be acceptable. The Board notes that the form of communication between auditors (*e.g.,* oral or written) depends on the circumstances of the audit and professional requirements (*e.g.,* PCAOB standards require that certain communications between the lead auditor and other auditor be in writing [143]). Although PCAOB standards do not prescribe a particular type of written communication (*e.g.,* print or electronic), they require that audit documentation, in whatever form, contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached.[144] In addition, the other auditor's audit documentation must be accessible by the lead auditor.[145] Further, audit documentation should demonstrate that the engagement complied with the standards of the PCAOB.[146]

Consistent with the above discussion, the Board adopted the amendment as proposed.

Determining Locations or Business Units at Which Audit Procedures Should Be Performed

See Paragraph .14 of AS 2101

Other auditors are often involved in audits of companies with operations in multiple locations or business units (''multi-location engagements''). In these circumstances, existing AS 2101.11–.13 address the determination of the locations at which audit procedures should be performed and the nature, timing, and extent of the audit procedures. Existing AS 2101.14 provides that, in situations in which AS 1205 applies, the auditor should perform the procedures in paragraphs .11–.13 to determine the locations or business units where audit procedures should be performed.

In light of the rescission of AS 1205, the Board amended AS 2101.14 to specify that, in an audit involving other auditors or referred-to auditors, the lead auditor should perform the procedures set forth in AS 2101.11–.13 to determine the locations or business units at which audit procedures should be performed. The amendment to AS 2101.14, together with the amended supervisory requirements in AS 1201, is intended by the Board to require that the lead auditor play the central role in determining the scope of the audit.

One commenter on the 2021 SRC recommended that the Board remove the requirements in proposed AS 2101.14 with regard to referred-to auditors because these requirements are not consistent with the principles underlying dividing responsibility (*i.e.,* the approach would diminish the line between assuming and dividing responsibility). The Board noted that the amendment to this paragraph is consistent with the relevant requirements in existing AS 2101.14 applicable to audits that involve divided responsibility. For audits involving referred-to auditors, new AS 1206 describes interactions, including communication of the lead auditor's plan to divide responsibility, and other measures to assure the coordination of activities between the lead auditor and the referred-to auditor when dividing responsibility.[147]

After considering the comments, the Board adopted the amendment as proposed.

Supervising Other Auditors

Overview of the Supervisory Approach

The Board's amendments are intended to improve the quality of audits that involve other auditors for whose work the lead auditor assumes responsibility by requiring, among other things, that the lead auditor supervise the other auditors under AS 1201, as amended.

Currently, the risk-based supervision approach described in AS 1201 does not apply to situations in which the lead auditor uses the work and reports of other auditors under AS 1205. AS 1205, which the Board rescinded, requires the lead auditor [148] to perform certain procedures, when using the work and reports of other auditors, that are more limited in scope than those required by the supervision standard, AS 1201. The amendments are designed to improve the lead auditor's oversight of other auditors by applying AS 1201 to *all* audits involving other auditors for whose work the lead auditor assumes responsibility.[149] The amendments also supplement the general supervisory requirements in AS 1201.05 by providing direction for applying these requirements in an audit involving other auditors.[150]

AS 1201 currently sets forth the general framework for supervision of engagement team members, including the nature and extent of supervisory activities. The standard allows the engagement partner to seek assistance in fulfilling his or her supervisory responsibilities from appropriate engagement team members, which includes team members from other firms involved in the audit.[151] While AS 1201 describes supervisory *activities,* it does not, however, describe supervisory *procedures* or assign them to a particular member, or members, of the engagement team. Further, the standard does not differentiate between the supervisory responsibilities of engagement team members at the lead auditor and at the other auditor.

Under PCAOB standards, the audit firm that issues the audit report is responsible for making sure that sufficient appropriate audit evidence has been obtained, and appropriately evaluated, to support the opinion in the audit report.[152] Because of the lead auditor's central role in the audit, the amendments the Board adopted require that certain supervisory *procedures* be performed by the lead auditor. These procedures are designed to improve the effectiveness of the lead auditor's supervision of the work of other auditors.

The amendments also are designed to be scalable by applying the existing principles in AS 1201, which are already familiar to auditors. When designing and performing supervisory activities the lead auditor determines the extent of supervision of the other auditors' work in accordance with paragraph .06 of AS 1201, which describes the factors to take into account when determining the extent of supervision necessary.[153] For example, the extent of the lead auditor's supervision of the other auditors' work depends on, among other things, the risks of material misstatement to the company's financial statements and the knowledge, skill, and ability of the other auditors.[154]

The lead auditor may determine that the necessary extent of supervision of the other auditor's work under AS 1201 entails performing supervisory procedures beyond those specified in

[143] *See, e.g.,* AS 1215.19.

[144] *See* AS 1215.06a.

[145] *See* AS 1215.18, as amended.

[146] *See* AS 1215.05a.

[147] *See* discussion below.

[148] ''Principal auditor'' is the term used in AS 1205.

[149] For situations in which the lead auditor divides responsibility for the audit with another accounting firm, see AS 1206. For certain audits involving investments accounted for under the equity method of accounting whose financial statements are audited by other auditors, see proposed rule text for changes to Appendix B of AS 1105.

[150] *See* AS 1201.07–.15.

[151] *See* AS 1201.04.

[152] *See* AS 2810 regarding evaluating the sufficiency and appropriateness of audit evidence.

[153] *See* AS 1201.07.

[154] *See* AS 1201.06.

the amendments. For procedures not assigned to the lead auditor under the amendments, the lead auditor may seek assistance from qualified engagement team members (including those at the other auditor) in supervising the work.[155] The approach to supervising other auditors under the amendments is consistent with, and takes into account, recent developments at some accounting firms that have been observed through the Board's oversight activities.[156]

Many commenters on the 2021 SRC noted that communications between the lead auditor and other auditors are iterative throughout the audit. In addition, some commenters stated that it was not clear to them whether under the amendments in the 2021 SRC other auditors can provide input to the lead auditor on certain issues.

The Board agrees with commenters that effective supervision by the lead auditor typically necessitates two-way communication with the other auditor. Similar to the amendments proposed in the 2021 SRC, the final amendments are designed to foster effective interaction by requiring the lead auditor to, as necessary, hold discussions with and obtain information from the other auditors to facilitate the performance of the supervisory procedures.[157]

The amendments to AS 1201 do not include the statement contained in rescinded AS 1205.03 that ''the other auditor remains responsible for the performance of his own work and for his own report.'' Nevertheless, the Board believes that supervision by the lead auditor does not relieve other auditors of their responsibilities, which include applying due professional care and complying with PCAOB standards. To reinforce this principle, the amendments add a statement to AS 1015, that other auditors are responsible for performing their work with due professional care.[158] This statement reminds other auditors of their responsibility to perform work in compliance with PCAOB rules and standards.[159] Commenters were supportive of this added statement, noting that it was clear and appropriate. That responsibility is further emphasized by (i) an amendment requiring an affirmation from the other auditor about its compliance with the lead auditor's instructions[160] and (ii) an amendment regarding audit documentation requirements.[161] The overall responsibility for the audit under the amendments remains, however, with the lead auditor, as is the case under the existing standards.[162]

Supervisory Procedures To Be Performed by the Lead Auditor

Under the amendments to AS 1201, the engagement partner remains responsible for the engagement and its performance. Accordingly, the engagement partner is responsible for proper supervision of the work of engagement team members, including the work of engagement team members outside the engagement partner's firm. In fulfilling his or her supervisory responsibilities, the engagement partner may seek assistance from appropriate engagement team members, including engagement team members outside the engagement partner's firm. Engagement team members who assist the engagement partner with supervision should exercise their supervisory responsibilities in accordance with AS 1201.

With respect to the lead auditor's supervisory procedures in the amendments, other engagement team members who both: (1) are partners, principals, shareholders, or employees of the registered public accounting firm issuing the auditor's report (or individuals who work under that firm's direction and control and function as the firm's employees); and (2) assist the engagement partner in fulfilling his or her planning or supervisory responsibilities on the audit pursuant to planning and supervision, are eligible to perform such procedures. In addition, in multi-tiered audits, the lead auditor may seek assistance from a first other auditor in performing the supervisory procedures in the amendments.[163]

To provide more specific direction for supervising the other auditors' work, the amendments to AS 1201 establish requirements for the lead auditor in the following areas:

- Informing other auditors of their responsibilities;
- Obtaining and reviewing a description of the audit procedures to be performed by other auditors;
- Obtaining and reviewing a written affirmation that other auditors performed their work in accordance with the lead auditor's instructions;
- Directing other auditors to provide specific documentation regarding their work; and
- Determining whether other auditors have performed the work assigned to them, and whether additional evidence should be obtained.

As noted in AS 1201.07, these requirements supplement the requirements in AS 1201.05. The requirements imposed by the amendments are described in new paragraphs AS 1201.08–.13 and discussed in more detail below.[164]

Informing Other Auditors of Their Responsibilities

See Paragraph .08 of AS 1201

AS 1201 currently requires that engagement team members be informed of their responsibilities, including the objectives and the nature, timing, and extent of the procedures to be performed, and other relevant matters.[165] For audits performed in accordance with AS 1205, the standard does not include a specific requirement for the lead auditor to inform other auditors of their responsibilities.[166]

To promote effective supervision of other auditors' work by the lead auditor, the amendments to AS 1201 specifically require the lead auditor to inform other auditors in writing of the following matters:

- The scope of work to be performed by the other auditor (*e.g.,* location or business unit[167] and the general type of

[155] *See* AS 1201.04.

[156] *See* further discussion above.

[157] *See, e.g.,* note to AS 1201.08 and AS 1201.10 (requiring the lead auditor to discuss with the other auditor any changes to its planned audit procedures), both of which were originally introduced in the 2016 Proposal. In addition, the amendments include a reference to paragraphs .49–.53 of AS 2110, *Identifying and Assessing Risks of Material Misstatement* (in a footnote to AS 1201.08) to remind the lead auditor of certain other required interactions with the other auditor. *See* discussion below.

[158] *See* note to AS 1015.01 (''For audits that involve other auditors, the other auditors are responsible for performing their work with due professional care.'').

[159] This amendment would not, of course, establish the sole responsibilities of other auditors. Like all auditors that participate in an audit performed under PCAOB standards, other auditors must comply with all applicable PCAOB standards. *See, e.g.,* PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards.*

[160] *See* AS 1201.11, which is discussed below.

[161] *See* AS 1215.18, which is discussed below.

[162] To emphasize this point, the amendments add a footnote to AS 1015.01, referring to AS 2101 and AS 1201, which set forth the lead auditor's responsibilities for planning and supervising the other auditor's work.

[163] *See* AS 1201.14.

[164] The amendments also specify certain supervisory responsibilities in multi-tiered audits, as discussed below.

[165] *See* AS 1201.05a.

[166] According to AS 1205.12, the lead auditor (or ''principal auditor'' in its terminology) should consider, among other things, reviewing the audit programs of the other auditor and issuing instructions to the other auditor as to the scope of audit work.

[167] As discussed above, in multi-location engagements that involve other auditors, the lead auditor is required to determine locations or business units at which audit procedures should be performed.

work to be performed, which could range from a few specified audit procedures to a standalone audit); and

- With respect to the work requested to be performed: the identified risks of material misstatement,[168] tolerable misstatement,[169] and the amount (if determined) below which misstatements are clearly trivial and do not need to be accumulated.[170]

Some commenters on the 2016 Proposal and the 2017 SRC interpreted the proposed amendments as requiring the lead auditor to communicate to other auditors all the risks of material misstatement for the location or business unit, or even all identified risks of material misstatement to the consolidated financial statements. Some of those commenters (some of whom also commented on the 2021 SRC) recommended that the lead auditor be required to communicate only the significant risks or only risks that are relevant to the other auditors' work. Some commenters agreed that the communication by the lead auditor to the other auditor about the scope of work, identified risks of material misstatement, and the amount (if determined) below which misstatements are clearly trivial and do not need to be accumulated, should be in writing.

In the 2021 SRC, the Board agreed with commenters who stated that the lead auditor should communicate to other auditors those risks to the consolidated financial statements that are relevant to the other auditors' work. The Board therefore included in AS 1201.08b in the 2021 SRC the qualifying phrases ''[w]ith respect to the work requested to be performed'' and ''to the consolidated financial statements that are associated with the location or business unit.'' [171] These phrases remain in the final amendments. The amendments do not limit the lead auditor's communication to significant risks (as some commenters suggested) because doing so could lead to inadequate testing of significant accounts and disclosures where a reasonable possibility of material misstatement to the financial statements exists.

Some commenters on the proposing releases also questioned whether the lead auditor is always best suited to assess risks of material misstatement at locations or business units audited by other auditors. Further, a couple of commenters to the 2021 SRC recommended that the amendments not require the lead auditor to communicate identified risks of material misstatements that are applicable to the location or business unit. Instead, the commenters recommended a requirement that focuses the lead auditor on communicating identified risks to the consolidated financial statements and matters that would assist the other auditor in developing a more granular view of risks specific to the location or business unit.

Although requiring the lead auditor to communicate to the other auditor the relevant risks of material misstatement to the company's financial statements is consistent with the lead auditor's responsibilities under PCAOB standards, existing PCAOB standards also recognize that additional risks of material misstatement to the company's financial statements may be identified by other auditors, who could be more familiar than the lead auditor with a particular location or business unit where such risks may originate.[172]

The Board agrees with commenters that input from other auditors may be necessary in identifying and assessing risks of material misstatement to the company's financial statements and developing an audit response. The amendments are designed to foster effective two-way communication by requiring the lead auditor to, as necessary, hold discussions with and obtain information from other auditors to facilitate the performance of the supervisory procedures.[173] Notably, all key engagement team members, including those at the other auditor firms, are already required under existing standards to discuss the susceptibility of the company's financial statements to material misstatement due to error or fraud, as part of performing the risk assessment procedures.[174] A reminder about these requirements is included in a footnote to AS 1201.08.[175]

The Board also agrees with commenters that under the existing requirements the lead auditor identifies and assesses the risk of material misstatement at the level of the company's (consolidated) financial statements. An additional reference was added to the amendments reminding lead auditors of the existing requirements of AS 2110.59 to identify and assess the risks of material misstatement at the financial statement level and assertion level.[176]

Obtaining and Reviewing a Written Description of the Audit Procedures To Be Performed by the Other Auditors

See Paragraphs .09 and .10 of AS 1201

Existing PCAOB standards require that the auditor develop and document an audit plan that includes a description of, among other things, the planned nature, timing, and extent of the risk assessment procedures, tests of controls, and substantive procedures.[177] In addition, pursuant to AS 1201, the auditor is required to inform engagement team members of their responsibilities, including the nature, timing, and extent of procedures they are to perform.[178] In situations governed by AS 1205, the lead auditor is required to consider reviewing the audit programs of the other auditor.[179]

Similar to the proposed amendments in the 2021 SRC, the final amendments to AS 1201 require the lead auditor to obtain and review the other auditor's written description of audit procedures to be performed,[180] determine whether any changes to the other auditor's planned audit procedures are necessary, and if so, discuss the changes with, and communicate them in writing to, the

[168] *See* AS 2110.49–.53 (referenced in a footnote to AS 1201.08), which requires key engagement team members (including those in differing locations) to hold discussions regarding risks of material misstatement due to error or fraud, which inform the identification and assessment of risks. The Board has adopted an additional reference reminding auditors of the requirements in AS 2110.59 regarding the auditor's responsibility to identify and assess the risks of material misstatement at the (consolidated) financial statement level and the assertion level.

[169] *See* AS 2105.08–.10 (referenced in a footnote to AS 1201.08), which describe determining the amount or amounts of tolerable misstatement, including for the individual locations or business units, where applicable. As noted above, it is common for audits using other auditors to take place in different locations, including different countries.

[170] *See* AS 2810.10–.11 (referenced in a footnote to AS 1201.08), which require auditors to accumulate misstatements identified during the audit, other than those that are clearly trivial, and provide that auditors may designate an amount below which misstatements are trivial and do not need to be accumulated. The requirement in the amendments indicates that the lead auditor makes the determination of the clearly trivial threshold under AS 2810, if such a threshold is determined.

[171] To align with similar language in AS 2101.11, the amendments have been revised from the 2021 SRC in AS 1201.08b(1) to change ''the identified risks ... that are *applicable to* the location or business unit'' to ''*associated with* the location or business unit.''

[172] *See* AS 2110.49–53.

[173] A note to AS 1201.08 provides that the lead auditor should, as necessary, hold discussions with and obtain information from the other auditor to facilitate the performance of procedures described in paragraph .08.

[174] *See* AS 2110.49–.53.

[175] *See* footnote 15 to AS 1201.08, citing AS 2110.49–.53, which require key engagement team members (including those in differing locations) to hold discussions regarding risks of material misstatement due to error or fraud, which inform the identification and assessment of risks.

[176] *See* footnote 15 to AS 1201.08.

[177] *See* AS 2101.10.

[178] *See* AS 1201.05a(2).

[179] *See* rescinded AS 1205.12.

[180] *See* AS 1201.09.

other auditor.[181] Under these amendments, the lead auditor is required to inform the other auditor of the level of detail needed in the other auditor's written description of audit procedures to be performed, based on the necessary extent of the lead auditor's supervision.

The amendments are intended to promote proper supervision of the other auditor's work by the lead auditor and proper coordination of work performed by the lead and other auditor. Importantly, the amendments are designed to accommodate different scenarios encountered in practice. For example, the other auditor who is more familiar than the lead auditor with a location or business unit may be better positioned to design detailed audit procedures for that part of the audit (which procedures would then be subject to the lead auditor's review and approval). Conversely, an other auditor who lacks experience in addressing certain risks may not be best suited to plan the work or to design detailed audit procedures in that area. The amendments provide that as the necessary extent of supervision increases, the lead auditor, rather than the other auditor, may need to determine the nature, timing, and extent of procedures to be performed by the other auditor.[182]

Many commenters on the 2021 SRC recommended that these requirements for the lead auditor be more principles-based to better accommodate an iterative process of communication between the lead auditor and other auditors, and the use of communication technology. For example, some commenters indicated that planned audit procedures and related changes could be communicated through video conferencing and screen sharing instead of in writing. These commenters encouraged the Board to revise AS 1201.09 and .10 to make them more principles-based and to reflect the recent technological innovations in communication. A couple of commenters went further and recommended removing from the amendments the requirement to ''obtain'' the information. A couple of other commenters either recommended that the Board allow the lead auditor to apply judgment in determining what changes should be communicated in writing to the other auditor based on the lead auditor's extent of supervision of the other auditor, or stated that the requirement could cause an other auditor that is not a member of the lead auditor's network to be concerned about the confidentiality of its audit methodology.

In its oversight activities, the PCAOB has seen challenges in the coordination and communication between lead auditors and other auditors, particularly in coordinating their responsibilities for the planning and performance of audit procedures. Requiring that certain communications be in writing facilitates the supervision of the engagement by reducing the risk of miscommunication and lack of clarity about responsibilities.

The terms ''obtain'' and ''in writing'' do not mandate that auditor working papers be paper-based.[183] The Board believes that technological advances in communication including those discussed by commenters could improve the effectiveness and efficiency of the lead auditor's supervision of other auditors, and the Board noted that the amendments would not hamper the implementation of novel means of communication, including documentation and review.

For example, a lead auditor could meet with other auditors through video conferencing and could view and discuss documents that are shared by video screen. The lead auditor could also obtain documents by (i) receiving them via electronic mail or by downloading them via an electronic portal and could store them electronically or (ii) accessing the other auditor's electronic working papers remotely. In any case, audit documentation supporting the lead auditor's conclusions will need to contain a record that the lead auditor fulfilled its responsibilities under PCAOB standards, including reviewing the relevant documents and meeting the requirements of other provisions and of other standards regarding matters such as determinations related to other auditors' work[184] and audit documentation.[185]

As with paper-based documentation of the work of other auditors, the necessary level of detail of the other auditors' electronic documentation that is required to be requested, obtained, and reviewed by the lead auditor and the lead auditor's communication to the other auditors under the amendments will depend on the necessary extent of supervision of the other auditors' work by the lead auditor.

Separately, requiring the lead auditor to obtain a written description of audit procedures to be performed from the other auditor and communicate changes in writing to the other auditor not only allows the Board to fulfill its mandates of inspecting and potentially investigating the lead auditor's oversight of the other auditor's work but it is also important for an audit firm's audit quality reviews such as engagement quality reviews and internal inspections. For the reasons discussed above, the Board adopted these requirements as proposed.

Obtaining and Reviewing the Other Auditor's Written Affirmation Regarding Work Performed

See Paragraph .11 of AS 1201

As was proposed in the 2021 SRC, under the amendments the lead auditor is required to obtain and review a written affirmation as to whether the other auditor performed work in accordance with the instructions provided, as described in paragraphs AS 1201.08–.10, including the other auditor's use of applicable PCAOB standards in performing that work. If the other auditor has not performed the work in accordance with the instructions provided, the lead auditor is required to obtain and review a description of the nature of, and explanation of the reasons for, the instances where the work was not performed in accordance with the instructions, including (if applicable) a description of the alternative work performed.

This requirement is designed to provide information to the lead auditor about whether the other auditor performed work in accordance with the lead auditor's instructions, to inform the lead auditor of audit areas that may require additional attention, and to emphasize the other auditor's responsibility for properly planning and performing its work in compliance with PCAOB standards. It is also consistent with the existing practice of affirming in writing an other auditor's compliance with the lead auditor's instructions (*e.g.,* in an ''interoffice memorandum'') at some audit firms. AS 1201.11 does not duplicate a requirement in AS 1215.19 for the lead auditor to obtain, review, and retain certain documents relating to the other auditor's work.

Commenters on the 2021 SRC supported the written affirmation in AS 1201.11 as they believed it was a

[181] *See* AS 1201.10.

[182] *See* note to AS 1201.09.

[183] *See* AS 1215.04 (audit documentation may be in the form of paper, electronic files, or other media).

[184] *See, e.g.,* AS 1201.13 (requiring the lead auditor to make certain determinations based on a review of the documentation provided by the other auditor, discussions with the other auditor, and other information obtained by the lead auditor).

[185] *See, e.g.,* AS 1215.06 and AS 1215.18 as amended.

necessary requirement, and the Board adopted it as proposed.

Directing the Other Auditors To Provide Specific Documentation

See Paragraph .12 of AS 1201

Supervision under existing PCAOB standards necessarily involves review of audit documentation.[186] For example, under AS 1201, the engagement partner and other engagement team members performing supervisory activities should review the work of engagement team members to evaluate whether the work was performed and documented. (AS 1201 does not specify the documents to be reviewed.) In addition, for audits involving other auditors, other PCAOB standards describe certain documentation of the other auditor's work that the lead auditor must obtain, review, and retain prior to the report release date.[187]

As the Board proposed in the 2021 SRC, the amendments supplement the existing standards by requiring the lead auditor to direct the other auditor to provide for the lead auditor's review specified documentation with respect to the work of the other auditor. This requirement is designed so that the lead auditor obtains information about the other auditor's work that is necessary for the lead auditor to carry out its supervisory responsibilities and that supports the lead auditor's obligation to obtain sufficient appropriate audit evidence to provide a reasonable basis for its opinion.

The amendments also state that the documentation requested by the lead auditor from the other auditor depends on the necessary extent of supervision of the other auditor's work by the lead auditor (which is based on a number of factors, including risk). Thus, under the amendments, review of additional documentation (*i.e.,* beyond the items listed in AS 1215.19) could be necessary to satisfy the lead auditor's supervisory responsibilities, for example, for work performed by less experienced other auditors, procedures in areas with heightened risks of material misstatement (including the other auditors' testing of controls that address the risks), or procedures to resolve significant issues arising during the audit. In directing the other auditor, the lead auditor could, for example, specify individual documents, types of documents, or documentation for audit areas that it intends to review.

One commenter generally supported the changes to proposed AS 1201.12 in the 2021 SRC that acknowledge the lead auditor's use of a risk-based approach in determining the documentation to review in performing its supervisory responsibilities. Another commenter recommended that the amendments clarify that determining the necessary incremental documentation for the lead auditor to review (in addition to documents described in PCAOB standards) should be based on the facts and circumstances of an audit engagement. Another commenter on the 2021 SRC stated that privacy laws in certain jurisdictions may create obstacles for the transfer of documentation from the other auditor's country to the lead auditor's country. And another recommended clarifying that not all the documentation described in AS 1215.19 may be applicable in some situations. For example, in situations where the other auditor's involvement consists of only performing certain limited procedures (*e.g.,* observing a company's physical inventory), certain documents in AS 1215.19 would not be applicable.

The Board considered these comments and determined that the requirements as proposed were sufficiently clear. The Board therefore adopted the requirements as proposed. As noted previously, the amendments specifically state that the documentation requested by the lead auditor from the other auditor will be based on the necessary extent of supervision of the other auditor's work by the lead auditor (which depends on a number of factors, including risks of material misstatement and the knowledge, skill, and ability of the other auditor).

Additionally, with regard to privacy laws and potential challenges to accessing working papers, if effective methods of remote access to the working papers are available to the lead auditor, the amendments do not preclude the use of such methods. However, as is the case under the existing requirements, engagement team members from the lead auditor may need to travel to the country where the working papers are located to access the working papers and perform their review. The amendments do not change the existing requirement in AS 1215.19 for obtaining, reviewing, and retaining certain documentation related to the other auditor's work by the office of the firm issuing the auditor's report. If the lead auditor cannot obtain sufficient appropriate audit evidence, a limitation on the scope of the audit may exist. This may require the engagement partner to qualify the audit opinion or disclaim an opinion.[188]

Finally, the Board agrees with the commenter that in situations in which the other auditor only performs select procedures for the lead auditor, such as observing physical inventories, the lead auditor is not required to obtain all of the documents described in AS 1215.19, because those documents would not be applicable to the limited type of work performed by the other auditor. However, this does not reduce the need for the lead auditor to obtain documentation prepared by the other auditor that is sufficient to fulfill its supervisory responsibilities under AS 1201.[189]

Determining Whether the Other Auditor Has Performed the Work, and Whether Additional Evidence Should Be Obtained

See Paragraph .13 of AS 1201

Under the general supervisory requirements of AS 1201, the engagement partner and his or her assistants should review the work of engagement team members to evaluate whether: (i) the work was performed and documented; (ii) the objectives of the procedures were achieved; and (iii) the results of the work support the conclusions reached.[190] In the scenarios that are governed by rescinded AS 1205, the lead auditor should consider performing one or more specified procedures in addition to obtaining, reviewing, and retaining certain documentation of the other auditor's work.

Under the amendments, AS 1201.13 provides that the lead auditor should determine, based on a review of the documentation provided by the other auditor, discussions with the other auditor, and other information obtained by the lead auditor during the audit: (i) whether the other auditor performed the work in accordance with the lead auditor's instructions, including the use of applicable PCAOB standards; and (ii) whether additional audit evidence should be obtained by the lead auditor or other auditors. Notably, the amendments do not require that in all cases the lead auditor review all the

[186] *See, e.g.,* AS 1201.05c.

[187] *See, e.g.,* AS 1215.19 and rescinded AS 1205.12.

[188] See AS 2810.35. *See also* paragraphs .05–.15 of AS 3105, Departures from Unqualified Opinions and Other Reporting Circumstances.

[189] *See also* AS1215.A65.

[190] *See* AS 1201.05c. Additionally, AS 1201.05b requires the engagement partner or other supervisors to direct engagement team members to bring significant accounting and auditing issues to their attention so they can evaluate those issues and determine that appropriate actions are taken in accordance with PCAOB standards. That requirement also applies in the supervision of other auditors.

documentation of the other auditor's work to determine whether the work has been performed. Rather, the lead auditor's determination should be based on the review of documents it requested from the other auditor under the amendments, discussions with the other auditors, and other information obtained during the audit.

The requirement to determine the need for additional evidence is intended to address circumstances that may be encountered in practice, including where the other auditors did not perform the procedures as instructed, or where sufficient appropriate audit evidence was not obtained. In those situations, the lead auditor would need to determine the appropriate next steps. For example, the lead auditor could determine that it is necessary for the lead auditor or the other auditor to perform additional audit procedures to address a previously unidentified risk of material misstatement or to obtain further audit evidence with respect to one or more locations or business units.[191]

Commenters did not oppose or suggest modifications to the proposed requirements in AS 1201.13, and the Board adopted them as proposed.

Multi-Tiered Audits

See Paragraphs .14–.15 of AS 1201 and Paragraphs .06Ac, .06E, and .06I of AS 2101

Supervisory Procedures in Multi-Tiered Audits—Directing a First Other Auditor

For various reasons, some engagement teams could involve multiple tiers of other auditors. Such ''multi-tiered'' audits are not expressly addressed in the existing standards.

In addition to describing multi-tiered audits, the amendments clarify that in multi-tiered audits the lead auditor may seek assistance from an other auditor (a ''first other auditor'') in fulfilling certain planning and supervisory responsibilities of the lead auditor with respect to one or more second other auditors (*i.e.,* procedures in paragraphs .08–.13 of AS 1201). Multi-tiered audits are described in the standard as those in which the engagement team is organized in a multi-tiered structure, *e.g.,* whereby an other auditor assists the lead auditor in supervising a second other auditor or multiple second other auditors. [192]

Under the amendments, the lead auditor determines whether to seek assistance from a first other auditor in supervising one or more second other auditors, pursuant to factors in AS 1201.06.[193] Notably, however, the lead auditor is responsible for the supervision of the entire audit, including the supervision of all other auditors.

For example, a multi-tiered audit of a U.S. multinational corporation that consolidates the results of its European operations in the U.K. could include the following structure:

- A U.S. firm as lead auditor;
- A U.K. firm as first other auditor, auditing the European operations; and
- A German firm as a second other auditor, auditing a business unit in Germany that is consolidated into, and is a significant portion of, the European operations.

In this example, under the amendments, the lead auditor could seek assistance from the U.K. firm in supervising the work of the second other auditor in Germany. In a more complex structure, the lead auditor could seek assistance from a first other auditor in supervising the work of multiple second other auditors.

The lead auditor's determination of whether it would be appropriate for the first other auditor to perform supervisory procedures with respect to the second other auditor should be based on the factors for determining the extent of supervision in AS 1201.06.

The lead auditor's use of a first other auditor is entirely within the lead auditor's discretion. The lead auditor could decide not to seek assistance from the first other auditor in supervising the work of second other auditors where, for example, the first other auditor's knowledge of a particular industry, particular accounting or auditing area, or PCAOB rules and standards is insufficient to effectively review the work of the second other auditors.

A commenter on the 2021 SRC asserted that the description of multi-tiered audits as proposed in footnote 19 to AS 1201.14 does not provide sufficient context for circumstances that might give rise to multi-tiered audits. The commenter suggested an alternative description that would be based on the financial reporting structure of an entity, which the commenter viewed as more important to defining the concept of a multi-tiered audit than the audit structure.[194] Having considered the comment, the Board decided to adopt the amendments as proposed in the 2021 SRC. The description of multi-tiered audits in the amendments and the related requirements are discussed in the context of existing auditor responsibilities, to illustrate how the existing responsibilities apply when an audit includes one or more supervisory tiers.

Another commenter recommended that the description of multi-tiered audits be moved to the definitions section in Appendix A of AS 2101. The Board has decided not to relocate the description of ''multi-tiered audits'' to Appendix A of AS 2101, as it is not intended to be a defined term in the standards, but rather a description of a current practice.

Supervisory Procedures in Multi-Tiered Audits—Evaluating a First Other Auditor's Supervision of a Second Other Auditor's Work

Under the amendments, the lead auditor is responsible for the supervision of the entire audit, including the supervision of all the other auditors' work. If a first other auditor performs supervisory procedures with respect to a second other auditor, the lead auditor is required to evaluate the first other auditor's supervision of the second other auditor's work.[195] If the first other auditor assists the lead auditor with performing the supervisory procedures described in AS 1201.14, the lead auditor is required to obtain, review, and retain documentation identifying the scope of work to be performed by the second other auditor.[196] The requirements for the supervision of the other auditor's work in a multi-tiered audit also apply to audits in which there are multiple second other auditors.[197]

Under the amendments, the lead auditor will consider the first other auditor's review of the second other auditor's work, and apply the provisions of AS 1201.06, including taking into account the knowledge, skill, and ability of the first other auditor, when determining the necessary extent of its review (if any) of the second other auditor's work.[198] For example, the lead auditor could determine it needs to be less involved in supervising the second other auditor (including reviewing the second other auditor's work) if the first other auditor has adequate experience in areas audited by the second other auditor and maintains documentation sufficient to understand the supervisory

[191] *See* AS 1201.13. *See also* AS 2810.35 and .36 (which are referenced in a footnote to AS 1201.13b), requiring the auditor, among other things, to obtain further audit evidence if sufficient appropriate audit evidence has not been obtained.

[192] *See* footnote 19 to AS 1201.14.

[193] AS 1201.14.

[194] The commenter provided the rationale that a multi-tiered audit may exist even if the first other auditor does not assist the lead auditor in supervising the work of a second other auditor.

[195] *See* AS 1201.14.

[196] *See* AS 1201.14.

[197] *See also* discussion below.

[198] *See* AS 1201.15.

procedures performed with respect to the second other auditor, and if no unexpected issues arise during the audit.

For purposes of the lead auditor's compliance with AS 1215.19 with respect to work performed by a second other auditor, the lead auditor may request that the first other auditor both (i) obtain, review, and retain the audit documentation described in AS 1215.19 related to the second other auditor's work (including the second other auditor's supervision of the work of further tiers of other auditors [199]) and (ii) incorporate the information in that documentation in the first other auditor's documentation that it provides to the lead auditor pursuant to AS 1215.19.[200] In other words, the amendments would not require the first other auditor to provide to the lead auditor multiple sets of the same type of documentation; for example, the first other auditor could submit to the lead auditor one schedule that incorporates misstatements identified during the audit by the first other auditor and the second other auditor(s).

One commenter on the 2021 SRC supported the requirements and stated that they provided the right approach to multi-tiered audits. Another commenter indicated that the lead auditor should be able to place greater reliance on a first other auditor than the proposed requirements allowed, including relying on the first other auditor to determine the extent of supervision of second other auditors. In addition, this commenter stated that it disagreed with the requirement that the lead auditor should obtain and review documentation that identifies the scope of work for each location or business unit in a multi-tiered audit, although it agreed that the lead auditor needed such information in order to consider whether (and if so, the extent to which) it should be involved in the work of the second other auditor.

With regard to the comment that the lead auditor should be able to place greater reliance on a first other auditor, including relying on the first other auditor to determine the extent of supervision of second other auditors, the aim of this rulemaking is to increase the lead auditor's involvement in and evaluation of the other auditors' work. This includes the lead auditor's supervision of the work of second other auditors in multi-tiered audit scenarios. Allowing the lead auditor to simply rely on the first other auditor's supervision of a second other auditor, as recommended by the commenter, would not be consistent with this goal. As stated above, under the amendments, the lead auditor determines its extent of supervision of the second other auditor's work in accordance with the factors in paragraph AS 1201.06.

With regard to the comment that the lead auditor should not have to obtain and review documentation that identifies the scope of work for each location or business unit in a multi-tiered audit, the Board continues to believe that obtaining and reviewing such documentation is critical for informing the lead auditor's supervision of the other auditors' work. Supervision of the engagement, including the work of second other auditors, is the lead auditor's responsibility, and the lead auditor's knowledge of the scope of the work of second other auditors is necessary to effectively discharge that responsibility.

One commenter on the 2021 SRC expressed concerns about how the requirement to evaluate a first other auditor's supervision of a second other auditor would be operationalized, in particular what information would be taken into account in making the evaluation. This commenter recommended that requiring an up-front discussion between the lead auditor and the first other auditor about how second other auditors will be used and supervised would be more beneficial to audit quality. This commenter also stated that because it may not always be possible to observe the nature and extent of the review performed by the first other auditor, the standard should require the lead auditor to obtain a written affirmation from the first other auditor that the second other auditor has been supervised as agreed with the lead auditor (similar to the requirement in AS 1201.11).

When evaluating the first other auditor's supervision of the second other auditor's work, the lead auditor would not, in normal circumstances, be expected to reperform the first other auditor's supervisory procedures. Instead, the lead auditor would evaluate whether the first other auditor properly performed the assigned supervisory procedures with respect to the second other auditor, coordinated its work with the second other auditor, and resolved significant matters arising during the audit. The lead auditor's evaluation may include holding discussions with the first other auditor and reviewing the first and second other auditors' audit plans, written reports, or other documentation. Overall, the extent of the lead auditor's evaluation of the first other auditor's supervision depends on the nature of the work performed by the second other auditor, the results of the work, and the necessary extent of the lead auditor's supervision of the first other auditor's work.

The Board does not agree with the recommendation that the lead auditor obtain a written affirmation from the first other auditor that the second other auditor has been supervised as agreed with the lead auditor. Under the amendments, the lead auditor is responsible for supervision of the entire engagement, including supervision of the first other auditor's supervision of second other auditors. An affirmation, by itself, may not provide information that is sufficient to discharge this responsibility. In some circumstances, for example, where the risks of material misstatements are higher, the lead auditor would need to evaluate more information than an affirmation to fulfill its responsibility to supervise the entire engagement, including the involvement of other auditors, to a necessary extent under PCAOB standards. Having considered the comments, the Board adopted the amendments as proposed in the 2021 SRC.

Audit Planning in Multi-Tiered Audits—Serving as Lead Auditor and Seeking Assistance From a First Other Auditor Related to a Second Other Auditor's Qualifications

As discussed in more detail above, the amendments include a third consideration for determining whether the participation of an engagement partner's firm is sufficient for the firm to carry out the responsibilities of a lead auditor and to report as such on the company's financial statements.[201] This third consideration pertains to the extent of the engagement partner's firm's supervision of other auditors' work for portions of the company's financial statements for which the other auditors perform audit procedures. With regard to multi-tiered audits, this consideration applies only to the engagement partner's firm's direct supervision of other auditors, and not to any supervisory assistance that the firm might receive from a first other auditor in a multi-tiered audit.

Some commenters indicated that with respect to determining the sufficiency of participation of the lead auditor, the amendments regarding supervisory assistance from other auditors in a multi-tiered audit are clear and appropriate. There were no comments opposing these amendments, and the Board adopted them as proposed.

[199] *See* discussion below.

[200] *See* note to AS 1201.14.

[201] *See* AS 2101.06Ac.

Under the final amendments, the lead auditor may seek assistance from a first other auditor in performing procedures relating to a second other auditor's qualifications, including (i) compliance with independence and ethics requirements (under AS 2101.06D),[202] and (ii) knowledge, skill, and ability, and certain other items (under AS 2101.06H).[203]

The amendments emphasize that the lead auditor remains responsible for determining the audit engagement's compliance with the independence and ethics requirements pursuant to AS 2101.06b.[204] If the lead auditor seeks assistance from the first other auditor, it should instruct the first other auditor to inform the lead auditor of the results of procedures, including bringing to the lead auditor's attention any information indicating that a second other auditor is not in compliance with the independence and ethics requirements.[205] Further, allowing the lead auditor to seek assistance from a first other auditor regarding the second other auditor's knowledge, skill, and ability is consistent with the existing supervisory requirement in AS 1201.06, which provides that an auditor (first other auditor in this instance) should take into account the second other auditor's qualifications to determine the necessary extent of supervision of the second other auditor's work.[206]

A couple of commenters agreed that the requirements applicable to multi-tiered audits relative to the planning procedures regarding a second other auditor's qualifications were clear and appropriate and supported the notion that the first other auditor is often best suited to perform these procedures. However, one commenter had concerns with the placement of the requirement related to knowledge, skill, and ability in a multi-tiered audit and suggested relocating it from AS 2101.06I to a note to AS 2101.06H but did not provide reasons for the concern. The same commenter also recommended that the first other auditor be expected to communicate to the lead auditor any concerns about the second other auditor's knowledge, skill, and ability.

With regard to the commenter's point on relocating the requirement to a note, the Board considered the comment but determined that moving the requirement to a note in AS 2101.06H is not necessary as its placement in a paragraph is sufficiently clear. Regarding a first other auditor's concerns about the second other auditor's knowledge, skill, and ability, a key element for determining the extent of supervision necessary is taking into account an engagement team member's knowledge, skill, and ability.[207] If the first other auditor had concerns regarding the knowledge, skill, and ability of a second other auditor, the first other auditor would take this into account and increase the extent of its supervision of the second other auditor's work. Additionally, under AS 1201.13, the first other auditor is required to determine—based on a review of the documentation provided by the second other auditor (pursuant to AS 1201.09–.12), discussions with the second other auditor, and other information obtained by the lead auditor during the audit—whether the second other auditor performed the work in accordance with the instructions and whether additional audit evidence should be obtained by the first other auditor, second other auditor, or the lead auditor. Having considered the comments received, the Board adopted the requirements as proposed.

Further Tiers of Other Auditors

In addition to the first and second other auditors, some engagements may involve further tiers of other auditors. For example, in the scenario discussed above, the business unit in Germany could acquire a company in Belgium, audited by a local firm, and the second other auditor in Germany could supervise and use the work of its Belgian counterpart (a third other auditor). As noted, the lead auditor could seek assistance from the U.K. firm in supervising the work of the second other auditor in Germany, which would include the German firm's supervision of the third other auditor in Belgium.

PCAOB standards are designed to work in situations involving multiple tiers of other auditors. While the amendments are focused on the planning and supervision responsibilities of the lead auditor, other requirements of PCAOB standards apply, and would continue to apply under the amendments, to all auditors involved in the audit. For example, in determining the necessary extent of supervision of the third other auditor's work, the second other auditor would be required to take into account items listed in AS 1201.06, including the nature of the work assigned to the third other auditor, the risks of material misstatement, and the third other auditor's knowledge, skill, and ability. No commenters expressed views different from the approach in the 2021 SRC regarding further tiers of other auditors. Therefore, the Board adopted the requirements as proposed.

Dividing Responsibility for the Audit With Another Accounting Firm

See AS 1206

AS 1206, a new standard, specifically addresses the lead auditor's division of responsibility for the audit with another accounting firm (*i.e.,* a referred-to auditor).[208] It carries forward, with certain modifications, relevant requirements for the divided-responsibility scenario that are in rescinded AS 1205.[209] Currently, divided-responsibility engagements are relatively uncommon.[210]

AS 1206 applies when the lead auditor divides responsibility for an audit of the financial statements and, if applicable, ICFR. Similar to AS 1205, the new standard does not require the lead auditor to supervise the referred-to auditor's work. Rather, each auditor is required to supervise its respective engagement team members in accordance with AS 1201.[211]

These requirements apply in circumstances where the lead auditor decides to refer to the work of the referred-to auditor in its auditor's report. In such circumstances, the lead auditor does not assume responsibility for the work of the referred-to auditor. Instead, the lead auditor discloses the division of responsibility between the lead auditor and the referred-to auditor and the magnitude of the portion of the audit performed by the referred-to auditor.

Under AS 1206, both the lead auditor and referred-to auditor remain responsible for their respective audits. For example, both the lead auditor and referred-to auditor are required to comply with PCAOB standards when planning and performing their

[202] *See* AS 2101.06E.

[203] *See* AS 2101.06I. This provision does not change the existing requirement for the other auditors' documentation (including the second other auditor's) to be accessible to the office issuing the auditor's report. (*See* AS 1215.18 as amended.)

[204] See *id.*

[205] *See* AS 2101.06E.

[206] *See* AS 1201.06d.

[207] *See id.*

[208] Rescinded AS 1205 did not use the term ''referred-to auditor.'' The definition of referred-to auditor is discussed above in this release.

[209] As discussed above, AS 1205 also includes requirements for audits in which the auditor assumes responsibility for the work of another firm.

[210] According to PCAOB staff analysis of Form AP filings with the PCAOB, lead auditors currently divide responsibility with another auditor in about 40 issuer audits per year.

[211] With respect to supervision, if there is more than one referred-to auditor, the requirements in AS 1206.03–.09 apply to the lead auditor regarding each referred-to auditor separately. If the lead auditor assumes responsibility for the work of another accounting firm, the lead auditor would be required to supervise the other firm's work in accordance with AS 1201.

respective audits, including making materiality determinations, and issuing audit reports.[212]

AS 1206 sets forth certain requirements for the lead auditor, which carry forward or strengthen the requirements of AS 1205. For example, AS 1206 requires the lead auditor to:

- Determine that audit procedures are performed, in coordination with the referred-to auditor, with respect to the consolidation or combination of the portions of the financial statements audited by the referred-to auditor; [213]
- Obtain a written representation from the referred-to auditor regarding the referred-to auditor's independence under requirements of the PCAOB and the SEC; [214]
- Determine, based on inquiries made to the referred-to auditor and other information obtained by the lead auditor during the audit, that the referred-to auditor is familiar with the relevant requirements of the applicable financial reporting framework, the standards of the PCAOB, and the financial reporting requirements of the SEC; [215] and
- Disclose in its auditor's report (i) the division of responsibility between the lead auditor and the referred-to auditor and (ii) the magnitude of the portions of the company's financial statements audited by the auditors.[216]
- Communicate to the referred-to auditor the decision to divide responsibility for the audit with the referred-to auditor [217] and determine a course of action when the lead auditor is unable to divide responsibility.[218]

In addition, AS 1206 establishes new requirements. For example, AS 1206 requires the lead auditor to:

- Obtain a representation from the referred-to auditor that the referred-to auditor is duly licensed to practice under the laws of the jurisdiction that apply to the referred-to auditor's work; [219]
- If the referred-to auditor plays a substantial role in the preparation or furnishing of the lead auditor's report, determine whether the referred-to auditor is registered with the PCAOB; [220]
- Disclose the name and refer to the report of the referred-to auditor in the lead auditor's report; [221] and
- Establish which auditor (lead auditor or referred-to auditor) has audited, and disclose in the lead auditor's report which auditor has taken responsibility for, the conversion adjustments in situations where the financial statements of the company's business unit audited by the referred-to auditor were prepared using a financial reporting framework that differs from the financial reporting framework used to prepare the company's financial statements.[222]

Consistent with AS 1205, a note to AS 1206.01 requires that the engagement partner in a divided-responsibility scenario determine the sufficiency of his or her firm's participation in the audit to serve as the lead auditor. This requirement appears in AS 2101.06A–.06C, discussed above.[223]

The 2016 Proposal retained the divided-responsibility approach that has long been permitted in PCAOB standards [224] and solicited views on whether this approach should be eliminated. Most commenters in the 2016 Proposal supported retaining the divided-responsibility approach because they observed no compelling practice issues that would suggest a need to eliminate it. In the 2017 SRC, the approach was retained.

Although most commenters to the 2016 Proposal supported retaining the divided-responsibility approach, some commenters on both the 2016 Proposal and the 2017 SRC expressed concern about retaining the approach.[225] They stated that the lead auditor is ultimately responsible for the overall audit opinion and should not refer to other auditors.[226]

Having considered the comments received, the Board has decided to retain the divided-responsibility alternative (with certain conditions set forth in the standard). Without the ability for auditors to divide responsibility, some companies may encounter situations in which no accounting firm is in a position to opine on the company's financial statements. For example, the lead auditor may be unable to plan and supervise another auditor's work if the subsidiary audited by the other auditor is acquired by the lead auditor's audit client late in a fiscal year. In this situation, the lead auditor may be unable to gain access to people (*e.g.,* subsidiary management, other auditor's personnel) and documentation (*e.g.,* subsidiary records, other auditor's working papers).[227] As a result, the lead auditor may be unable to obtain sufficient appropriate audit evidence to support an unqualified audit opinion on the company's consolidated financial statements and may determine to withdraw from the audit engagement or disclaim its opinion.

Objectives

See Appendix A of AS 2101 and Paragraph .02 of AS 1206

AS 1206, unlike AS 1205 (which the Board has rescinded), discusses the following objectives of the lead auditor: (i) communicate with the referred-to auditor and determine that audit procedures are properly performed with respect to the consolidation or combination of accounts in the company's financial statements and, where applicable, internal control over financial reporting; and (ii) make the necessary disclosures in the lead auditor's report.[228]

Some commenters suggested revising the proposed objectives. One commenter on the 2016 Proposal suggested that the objectives should include performing procedures necessary to make reference to the report of the referred-to auditor in the lead auditor's report, and making necessary disclosures in the report. Another commenter suggested broadening the objective to cover the assessment of the referred-to auditor's independence and competence and

[212] *See, e.g.,* AS 2101.11–.14 and AS 2105.10.

[213] *See* AS 1206.03 and AS 1205.10.

[214] *See* AS 1206.05a and AS 1205.10b.

[215] *See* AS 1206.06b and AS 1205.10c(ii)–.10c(iii).

[216] *See* AS 1206.08a and .08c, and AS 1205.07.

[217] *See* AS 1206.04 and AS 1205.10(c)(i).

[218] *See* AS 1206.07 (requiring the lead auditor, if it cannot divide responsibility, to plan and perform procedures necessary for it to issue an opinion, qualify or disclaim its opinion, or withdraw from the engagement) and AS 1205.11.

[219] AS 1206.05b.

[220] AS 1206.06c.

[221] AS 1206.08b.

[222] AS 1206.06d.

[223] AS 2101.06A–.06C also address, among other things, the sufficiency-of-participation determination for audits subject to AS 1201.

[224] The SEC has historically accepted audit reports indicating a division of responsibility between a lead auditor and referred-to auditor that express their opinion on the respective financial statements.

[225] *See* Section III.F.1 of the 2021 SRC for a more detailed discussion of comments received (*e.g.,* concern that a lead auditor might divide responsibility to avoid liability for its work on the audit, concern that the effectiveness of audit committee oversight could be reduced if the audit committee has no relationship with the referred-to auditor, risk of leakage of market sensitive information may increase if the referred-to auditor is involved in a corporate transaction), including the Board's responses.

[226] Similar comments were made by certain members of the Board's Standing Advisory Group (''SAG'') at the May and December 2016 SAG meetings and the May 2017 SAG meeting. At the May 2016 and 2017 SAG meetings, the observer from the Auditing Standards Board acknowledged that AICPA standards allow for divided responsibility. Transcript excerpts for these meetings are available in the docket for this rulemaking on the PCAOB's website, available at *https://pcaobus.org/Rulemaking/Pages/Docket042.aspx.*

[227] *See also* discussion below regarding investee financial statements audited by an investee's auditor.

[228] *See* AS 1206.02.

proper communication between the lead auditor and referred-to auditor to clarify roles and responsibilities.

Having considered the comments received, the Board believes that the recommended revisions relate to details of performance and reporting rather than to high-level objectives of the standard. It also notes that the lead auditor would effectively accomplish the objectives suggested by the commenters by performing the procedures described in AS 1206.[229] Thus, the Board adopted the standard's objectives as proposed.

Performing Procedures With Respect to the Audit of the Referred-to Auditor

Performing Procedures Regarding the Consolidation or Combination of the Financial Statements

See Paragraph .03 of AS 1206

Under AS 1206.03, the lead auditor should determine that audit procedures are performed, in coordination with the referred-to auditor, to test and evaluate the consolidation or combination of the financial statements of the business units [230] audited by the referred-to auditor into the company's financial statements. Matters affecting the consolidation or combination of the financial statements typically include items that are not in the scope of the referred-to auditor's audit, such as elimination of intercompany transactions with the business unit audited by the referred-to auditor.

This provision in AS 1206 builds on and strengthens a requirement for the lead auditor in AS 1205.10 regarding adopting appropriate measures to assure the coordination of the lead auditor's activities with those of the referred-to auditor in order to achieve a proper review of matters affecting the consolidating or combining of accounts in the financial statements. Commenters did not address this proposed provision, and the Board adopted it as proposed.

Communicating the Plan To Divide Responsibility

See Paragraph .04 of AS 1206

Under AS 1206.04, the lead auditor is required to communicate to the referred-to auditor, in writing, its plan to divide responsibility for the audit with the referred-to auditor pursuant to PCAOB standards. A referred-to auditor who has been informed of the lead auditor's plan to divide responsibility will be able to take the necessary steps to ascertain the implications of participating in the audit of the company. For example, SEC rules require that the audit report prepared by the referred-to auditor be filed with the SEC.[231]

This provision in AS 1206 builds on and strengthens a requirement for the lead auditor in AS 1205.10 regarding ascertaining that the referred-to auditor is aware of the divided-responsibility arrangement.[232] Commenters did not address this provision, and the Board adopted it as proposed.

Requesting a Written Representation Regarding Independence and Licensing

See Paragraph .05 of AS 1206

AS 1206.05a provides that the lead auditor should obtain a written representation from the referred-to auditor that the referred-to auditor is independent of the audit client under the requirements of the PCAOB and SEC. This provision is designed to strengthen the existing requirements regarding the lead auditor's responsibilities with respect to the independence of the referred-to auditor.[233] Commenters did not address this proposed requirement, and the Board adopted it as proposed.

AS 1206.05b provides that the lead auditor should obtain a written representation from the referred-to auditor that it is duly licensed to practice under the laws of the jurisdiction that apply to the work of the referred-to auditor. This requirement is not included in AS 1205. Commenters did not address this proposed requirement of AS 1206, and the Board adopted it as proposed.

Conditions for the Lead Auditor To Divide Responsibility, and the Lead Auditor's Course of Action When It Is Unable To Divide Responsibility

See Paragraphs .06 and .07 of AS 1206

AS 1206 describes the (i) conditions that must be met for the lead auditor to divide responsibility with the referred-to auditor and (ii) lead auditor's course of action when it is unable to divide responsibility.[234] These provisions strengthen the requirements in AS 1205.11.[235] The requirements of AS 1206, which are discussed in more detail below, are designed to facilitate compliance with PCAOB and SEC independence requirements and PCAOB registration rules, and to reduce the likelihood of filing auditors' reports with the SEC that violate any relevant local licensing requirements.

Conditions for the Lead Auditor To Divide Responsibility

Performed an Audit and Issued an Auditor's Report in Accordance With PCAOB Standards, and Was Registered With PCAOB (When Applicable)

Under AS 1206.06a, the lead auditor may divide responsibility with another accounting firm only if the referred-to auditor has represented that it has performed its audit and issued its auditor's report in accordance with PCAOB standards.[236] This provision, which is not included in AS 1205, is consistent with existing SEC rules and guidance with respect to the auditors' reports filed with the SEC.[237] Further, according to AS 1206.06c, the lead auditor may divide responsibility with another accounting firm that would play

[229] *See* AS 1206.03–.07 regarding performing procedures with respect to the audit of the referred-to auditor, and AS 1206.08–.09 regarding making reference in the lead auditor's report. *See also* AS 1206.05–.06 regarding certain qualifications of the referred-to auditor, and AS 1206.03–.04 regarding coordinating certain procedures with, and communicating certain matters to, the referred-to auditor.

[230] As stated in footnote 7 of AS 1206.03, the term ''business units'' includes subsidiaries, divisions, branches, components, or investments.

[231] *See* Regulation S–X Rule 2–05, 17 CFR 210.2–05, which requires that, in divided-responsibility scenarios, the referred-to auditor's report be filed with the SEC. Rule 2–05 provides that if, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant must be filed. The term ''principal accountant'' is used in the rule. *See* discussion above regarding whether the term ''referred-to auditor'' is aligned with the term ''principal accountant'' used by the SEC, noting that the definitions in this rulemaking do not affect the applicability of SEC terms or rules to audits involving other auditors or referred-to auditors, including the definition of ''principal accountant.''

[232] *See* AS 1205.10(c)(i).

[233] AS 1205.10 requires the lead auditor to ''make inquiries'' concerning the other auditor's independence, which inquiries ''may include'' procedures such as obtaining a representation from the other auditor that the other auditor is independent.

[234] *See* AS 1206.06 and .07.

[235] Under AS 1205.11, the lead auditor should appropriately qualify or disclaim its opinion on the consolidated financial statements if it concludes that it can neither assume responsibility for the work of the other auditor nor divide responsibility with the other auditor.

[236] AS 3101, The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, and AS 3105, Departures from Unqualified Opinions and Other Reporting Circumstances, apply to auditors' reports issued for audits of historical financial statements that are intended to present financial position, results of operations, and cash flows in conformity with the applicable financial reporting framework. AS 2201 applies to auditors' reports issued for audits of management's assessment of the effectiveness of internal control over financial reporting that is integrated with an audit of the financial statements.

[237] *See* Regulation S–X Rule 2–02(b)(1), 17 CFR 210.2–02(b)(1); SEC, Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1, Release No. 34–49708 (May 14, 2004).

a substantial role in the preparation or furnishing of the lead auditor's report, or, if the referred-to auditor's report is with respect to a business unit that is itself an issuer, broker, or dealer, only if that firm is registered with the PCAOB.[238]

AS 1206 mirrors current PCAOB registration requirements. It does not establish additional criteria for registering with the PCAOB or otherwise change the registration requirements. Specifically, AS 1206 will not allow the lead auditor to divide responsibility for the audit with an unregistered public accounting firm unless that firm is not required to be registered with the PCAOB under Sarbanes-Oxley Section 102(a) and PCAOB Rule 2100.

The standard the Board adopted clarifies, in a footnote to paragraph .06, that if the referred-to auditor is not registered with the PCAOB, the requirement in AS 3101 regarding stating in the auditor's report that the auditor is registered with the PCAOB does not apply to the referred-to auditor's report.[239] The same footnote also points out that disclosure in the referred-to auditor's report that a firm is not registered with the PCAOB (or omission of a statement that the firm is registered) does not relieve that firm of its obligation to register when required. The Board received no comments on this provision and adopted it as proposed.

Knowledge of Relevant Requirements and Standards

Under AS 1206.06b, the lead auditor may divide responsibility with the referred-to auditor only if the lead auditor determines, based on inquiries made to the referred-to auditor and other information obtained by the lead auditor during the audit, that the referred-to auditor is familiar with the relevant requirements of the applicable financial reporting framework, PCAOB standards, and SEC financial reporting requirements.

The final standard's formulation ''is familiar with'' was included in the 2021 SRC, modifying the earlier formulation ''knows,'' to reflect the difference in the lead auditor's relationship with the referred-to auditor (for divided responsibility) and the other auditor (for supervision). As noted in the 2021 SRC, the lead auditor does not supervise the referred-to auditor, because the referred-to auditor is responsible for its audit of and audit report on the financial statements (and, if applicable, ICFR) of the company's business unit. The lead auditor does not take responsibility for the referred-to auditor's audit. In contrast, when an other auditor is involved in the audit, the lead auditor supervises the other auditor's work, takes responsibility for that work, and is therefore required to obtain a more in-depth understanding of the other auditors' knowledge, skill, and ability when establishing the necessary extent of supervision than for a referred-to auditor in a divided-responsibility audit.

Commenters did not address this amendment, and the Board adopted it as proposed.

Financial Reporting Framework Used To Prepare the Company's and Business Unit's Financial Statements

Under AS 1206.06d, in relatively uncommon situations when the financial statements of the company's business unit audited by the referred-to auditor are prepared using a financial reporting framework that differs from the framework used to prepare the company's financial statements, the lead auditor may divide responsibility only if (i) either the lead auditor or the referred-to auditor has audited the conversion adjustments and (ii) the auditor's report of the lead auditor indicates which auditor audited the conversion adjustments. (AS 1205, which is being rescinded, does not explicitly address these situations.)[240] The final standard's approach was proposed in the 2017 SRC, reversing the restriction in the 2016 Proposal that would not have permitted the division of responsibility in the audit of a company whose applicable financial reporting framework differs from that of its business unit.[241] The Board believes the resulting approach is practicable and balanced and adopted the provision substantially as proposed in the 2017 SRC.

Commenters on the 2017 SRC largely agreed with the revised provision, although two commenters recommended revisions. One recommended an additional requirement, that the lead auditor document its basis for concluding that the auditor of the conversion adjustments has sufficient knowledge of both reporting frameworks. Another commenter asserted that the lead auditor's disclosure of another auditor's audit of conversion adjustments could be misconstrued as a disclaimer of responsibility for that work.

With regard to the first commenter's recommendation, the Board notes that a separate documentation requirement is unnecessary because the lead auditor's compliance with the requirements relating to the referred-to auditor's knowledge of the relevant requirements is already required to be reflected in audit documentation under the existing PCAOB standards.[242] With regard to the second commenter's argument, the Board notes that the required disclosure in the lead auditor's report would clearly identify the auditor that has taken responsibility for auditing the conversion adjustments and the PCAOB has inspection and enforcement authority over both firms.

Appendix B of AS 1206 provides examples of the introductory paragraphs in the lead auditor's report when the conversion adjustments are audited by the lead auditor (Example 3) and the referred-to auditor (Example 4).

Lead Auditor's Course of Action When the Lead Auditor Is Unable To Divide Responsibility Under AS 1206

AS 1206.07 provides guidance for situations in which the lead auditor is unable to divide responsibility with another accounting firm. Such a situation may arise, for example, due to the lead auditor's concerns about the qualifications of the referred-to auditor. Concerns about the referred-to auditor's qualifications could encompass both competence and PCAOB registration status. The lead auditor may also have concerns about whether the referred-to auditor's audit was performed in accordance with PCAOB standards if, for instance, information comes to the lead auditor's attention that raises such doubt.

For situations in which the lead auditor is unable to divide responsibility for the audit with another accounting firm, paragraph .07 of AS 1206 describes the following alternatives for the lead auditor's course of action:

- Planning and performing procedures with respect to the portion

[238] *See* Section 102(a) of Sarbanes-Oxley, 15 U.S.C. 7212(a); PCAOB Rule 2100, *Registration Requirements for Public Accounting Firms;* paragraph (p)(ii) of PCAOB Rule 1001 (defining the phrase ''play a substantial role in the preparation or furnishing of an audit report'').

[239] *See* AS 3101.06 and .09g, and AS 2201.85A and .85Dd.

[240] PCAOB staff analyzed Form 10–K and Form 20–F filings with the SEC for the twelve-month period ended April 30, 2022. This search identified 38 divided-responsibility opinions, three of which the lead auditor divided responsibility with another auditor when the company and a business unit prepared their financial statements under different financial reporting frameworks. These filings did not state which auditor audited the conversion adjustments.

[241] *See* 2017 SRC at 25–26.

[242] *See, e.g.,* AS 1215.05a (providing that audit documentation should ''[d]emonstrate that the engagement complied with the standards of the PCAOB'').

of the company's financial statements covered by the other accounting firm's report that are necessary for the lead auditor to express an opinion on the company's financial statements and, if applicable, ICFR;

- Appropriately qualifying or disclaiming the lead auditor's report; [243] or
- Withdrawing from the engagement.

A commenter requested that the standard state that the circumstances described in AS 1206.07 exist in situations when the lead auditor originally expected to divide responsibility with the referred-to auditor but subsequently determined that it was no longer possible. This commenter also stated that AS 1206.07, as proposed, limits the lead auditor's course of action to the three options presented and recommended that another option be added whereby the work would be performed by another accounting firm.

The Board agrees that AS 1206.07 applies only in situations when the lead auditor originally expected to divide responsibility with another accounting firm but subsequently determined that dividing responsibility with that accounting firm was no longer possible. Further, the Board notes that the course of action suggested by the commenter (*i.e.,* having another accounting firm perform the work) is already available to the lead auditor under AS 1206.07a, as a lead auditor that complies with the relevant requirements of PCAOB standards is permitted to plan and perform procedures with respect to the business unit itself, divide responsibility for that work with another referred-to auditor, or supervise and assume responsibility for the work of an other auditor.

No further comments were received on this topic and the Board adopted the requirement substantially as proposed.

Making Reference in the Lead Auditor's Report to the Referred-to Auditor's Audit and Report

See Paragraphs .08 and .09 of AS 1206

Enhanced Requirements for Making Reference

Paragraphs .08 and .09 of AS 1206 establish requirements for making reference in the lead auditor's report to the audit and auditor's report of the referred-to auditor.[244] Because this rulemaking generally carries forward, with certain modifications, AS 1205's provisions for divided-responsibility audits, the requirements for making reference in AS 1206 are similar to the analogous provisions of AS 1205. For example, similar to AS 1205, AS 1206 requires that the lead auditor's report (or reports, if the lead auditor chooses to issue separate reports on the company's financial statements and internal control over financial reporting):

- Indicate clearly, in the Opinion on the Financial Statements and, if applicable, Internal Control over Financial Reporting and Basis for Opinion sections, the division of responsibility between the portion of the company's financial statements and, if applicable, ICFR, covered by the lead auditor's own audit and that covered by the audit of the referred-to auditor; [245] and
- Disclose the magnitude of the portion of the company's financial statements and, if applicable, ICFR, audited by the referred-to auditor (or by each of the referred-to auditors if there is more than one). This may be done by stating the dollar amounts or percentages of total assets, total revenues, or other appropriate criteria necessary to identify the portion of the company's financial statements audited by each of the referred-to auditors.[246]

If the report of the referred-to auditor includes an opinion other than an unqualified opinion or includes explanatory language, AS 1206, similar to AS 1205, requires that the lead auditor make reference in the lead auditor's report to the departure from the unqualified opinion and its disposition, or the explanatory language, or to both, unless the matter is clearly trivial to the company's financial statements.[247] AS 1206 does not require that the lead auditor's report make reference to critical audit matters (CAMs) of the referred-to auditor, as each auditor must determine whether there are any CAMs arising from its own audit under AS 3101.

A commenter questioned whether, under AS 1206.08c, the magnitude of the portion of the company's financial statements audited by the referred-to auditor needs to be disclosed for each referred-to auditor individually. The commenter asserted that in practice the lead auditors' reports generally disclose the magnitude of the referred-to auditors' portions of the company's financial statements, and if applicable ICFR, in combination (not for each referred-to auditor). The commenter therefore recommended that the Board modify the requirement in line with the commenter's understanding of current practice.

The Board believes that the lead auditor's report should disclose the magnitude of the portion of the company's financial statements and if applicable, ICFR, individually for each referred-to auditor. In addition to providing greater transparency to investors and other users of the lead auditor's report about accounting firms involved in the audit and their responsibilities, the individual disclosure approach is not inconsistent with divided-responsibility reporting observed in practice. Based on a staff analysis of SEC filings, most lead auditor opinions that refer to multiple referred-to auditors disclose the magnitude of the referred-to auditors' portions of the company's financial statements individually.[248] The amendments state in the second note to AS 1206.01 that the requirements in paragraphs .03–.09 must be applied to each referred-to auditor individually.

The same commenter suggested replacing the proposed ''and'' (before the phrase ''other appropriate criteria'') in the last sentence of AS 1206.08c with ''or'' to indicate that not all magnitude criteria need to be disclosed. The Board agrees that under AS 1206 the magnitude may be expressed by using the criteria listed in paragraph .08c, but does not require using all criteria. Complying with AS 1206 involves using criteria that are necessary to provide a clear and informative disclosure in the lead auditor's report of the magnitude of the portion of the company audited by the referred-to auditors, and that may require disclosure of more than one criterion in some cases. To enhance clarity, the Board replaced the term

[243] AS 1206, in a note to paragraph .07b, requires the lead auditor to state the reasons for departing from an unqualified opinion and, when expressing a qualified opinion, disclose the magnitude of the portion of the company's financial statements to which the lead auditor's qualification extends. A footnote to AS 1206.07 refers to the relevant requirements of AS 3105 and Appendix C of AS 2201.

[244] In addition, Appendix B of AS 1206 includes examples of reporting by the lead auditor (Examples 1 through 4). The Board's consideration of certain aspects of the examples are discussed below. In addition, the examples consider the requirements of AS 3101 and AS 3501. Those standards were approved by the SEC after the issuance of the 2016 Proposal. *See* SEC Release No. 34–81916 (Oct. 23, 2017).

[245] *See* AS 1206.08a.

[246] *See* AS 1206.08c. *See also* second note to AS 1206.01, which states when there is more than one referred-to auditor, the lead auditor must apply the requirements of AS 1206.03–.09 in relation to each of the referred-to auditors individually.

[247] *See* AS 1206.09. *See also* note to paragraph .10 of AS 2810, *Evaluating Audit Results* (describing ''clearly trivial'').

[248] PCAOB staff analyzed Form 10–K and Form 20–F filings with the SEC for the twelve-month period ended April 30, 2022. This search identified 38 divided-responsibility opinions, two of which made reference to multiple-divided-responsibility audits. Both of those opinions presented the magnitude disclosures disaggregated.

''and'' with ''or'' as suggested by the commenter.

The Board considered these comments and determined that the remaining requirements were sufficiently clear and adopted them as proposed.[249]

Identifying the Referred-to Auditor by Name

To enhance the clarity of disclosure to investors and other users of the lead auditor's report, the Board adopted a new requirement in AS 1206.08b to identify the referred-to auditor by name in the lead auditor's report. SEC rules already require that the auditor's report of the referred-to auditor be filed with the SEC, so the name of the referred-to auditor is already made public.[250]

Three commenters on the 2016 Proposal and 2021 SRC objected to the proposed disclosure, because the reader can obtain the referred-to auditor's name from the referred-to auditor's report filed with the SEC or from Form AP filed with the PCAOB.[251] Having considered these comments, the Board notes that the new provision—which builds on the existing disclosure of referred-to auditor responsibilities in the lead auditor's report, without imposing any significant compliance burden on the lead auditor—will provide interested parties a more convenient mechanism for obtaining names of the referred-to auditors, whose responsibilities, but not names, have long been disclosed in the lead auditor's report.

Other Considerations Relating To Making Reference

Some commenters on the Proposal and the 2017 SRC suggested addressing, in the reporting examples provided in AS 1206, situations in which the lead auditor issues separate reports on the financial statements and ICFR. Having considered the comments received, the Board included in the 2021 SRC an example of separate financial statement reporting in Appendix B of AS 1206 (Example 2). The Board received no comments on this example and adopted it as proposed. In addition, in the 2021 SRC, the Board modified the reporting examples to reflect the amendments to AS 3101 that were approved by the SEC after the issuance of the 2017 SRC.[252] The examples as adopted include these modified examples.

Other Matters

Investee Financial Statements Audited by an Investee's Auditor

See Paragraphs .B1–.B2 of AS 1105

In some audits, auditors other than the firm issuing the auditor's report on the company's financial statements perform audit procedures on the financial statements of the company's investees, for example, for certain investments accounted for by the company under the equity method (*i.e.,* investees' auditors). Under AS 1205.14, the company's auditor (*i.e.,* investor's auditor) who uses the report of an investee's auditor for the purpose of reporting on the investor's equity in underlying net assets and its share of earnings or losses and other transactions of the investee is in the position of a lead auditor[253] using the work and reports of other auditors under AS 1205.

Under the amendments, in equity method investment situations, the investor's auditor would look to the requirements of Appendix B of AS 1105, *Audit Evidence,* which describe the auditor's responsibilities for obtaining sufficient appropriate evidence in situations in which the valuation of an investment is based on the investee's financial results.[254] Thus, under the amendments, the investor's auditor would be able, where appropriate, to use the work and report of the investee's auditor.

The amendments add to Appendix B of AS 1105 certain relevant provisions currently included in AS 1205,[255] to further guide auditors in equity method investment circumstances. First, the amendments refer to the independence of the investee's auditor as an item for the investor's auditor to consider in determining whether the investee's auditor's report is satisfactory. Under existing AS 1105.B1, financial statements of the investee that have been audited by an investee's auditor whose report is satisfactory to the investor's auditor may constitute sufficient appropriate audit evidence. The amendments add ''making inquiries as to the . . . *independence* of the investee's auditor (under the applicable standards)'' (*i.e.,* whether the investee's auditor is independent of the investee) to the list of procedures in AS 1105.B1 that the investor's auditor may consider performing. AS 2101.06b requires the auditor to determine compliance with independence and ethics requirements.[256]

Second, the amendments refer to the professional reputation or independence of the investee's auditor as an item for the investor's auditor to consider in determining whether it needs additional evidence regarding the investee's financial results. Under existing AS 1105.B2, if in the auditor's judgment additional evidence is needed concerning the investment, the auditor should perform procedures to gather evidence. The amendments add the investor's auditor's ''concerns about the professional reputation or independence of the investee's auditor'' to the list of examples that may cause the investor's auditor to conclude that additional evidence is needed.

Because of a wide range of potential scenarios in practice involving equity method investees, the amendments do not specify which auditor should perform procedures to obtain additional evidence. Under the facts and circumstances of a particular audit, the investor's auditor may determine, for example, to use its own staff to perform procedures or seek assistance from the investee's auditor and supervise the investee's auditor's work under AS 1201. The amendments also preserve the ability of the investor's auditor (afforded in the current requirements) to divide responsibility for the audit with the investee's auditor, where appropriate. In such situations, the new standard AS 1206 would apply.

Several commenters were supportive of the proposed amendments for investee auditors, with some noting that the requirements provide a reasonable approach, while not being too prescriptive to allow for the investor auditor to make judgments. One commenter suggested that the Board define the term ''investee auditor'' and clarify in the rule text that the investee auditor is not considered an ''other auditor.'' This commenter stated that this point is explicit in the release but

[249] Paragraph .09 was modified from the version in the 2017 SRC by: using the terminology in AS 3101 (which was amended by the PCAOB in 2017); adding a footnote reference to the relevant requirements of AS 3101, AS 3105, and AS 2201; and referencing a footnote in AS 1206.06 that addresses certain situations where the referred-to auditor is not registered with the PCAOB (as discussed above regarding conditions for dividing responsibility).

[250] *See* Rule 2–05 of Regulation S–X, 17 CFR 210.2–05.

[251] Registered public accounting firms must report to the Board on Form AP, pursuant to PCAOB Rule 3211, regarding the participation of other public accounting firms in the audit. Form AP disclosure applies to scenarios when responsibility for the audit is divided.

[252] *See* SEC Release No. 34–81916 (Oct. 23, 2017).

[253] ''Principal auditor'' is used in AS 1205.

[254] *See* Appendix B of AS 1105. See also Auditing Accounting Estimates, Including Fair Value Measurements and Amendments to PCAOB Auditing Standards, PCAOB Release No. 2018–005 (Dec. 20, 2018).

[255] *See* AS 1205.10.

[256] *See* SEC, Division of Corporation Finance, *Financial Reporting Manual,* Topic 4, Section 4110.5, Independent Accountants' Involvement (SEC staff guidance outlining the application of certain PCAOB requirements in various filings with the SEC).

not apparent in the proposed amendments. Another commenter expressed concern that the proposed terms and definitions in the rulemaking, including the term ''investee's auditor,'' are fairly prescriptive and may be out of date after the Board adopts a final standard.

The Board considered these comments in adopting the amendments. The term investee's auditor pertains to a concept that is not new and is consistent with the terminology already in the standard,[257] and the Board does not believe that the term should be revised or eliminated. With regard to the comment that the Board should define the term investee auditor and clarify that the investee auditor is not considered an other auditor, it is possible that an investor's auditor may decide that it is able to supervise an investee's auditor under AS 1201, having considered the factors in AS 2101.12. In that situation, the investee's auditor could be considered an other auditor under the amendments.

Another commenter suggested that, in the situation involving an investee's auditor, sufficient appropriate audit evidence cannot be obtained through simple evaluation of sufficiency of the investee's financial statements and results. This commenter suggested that additional procedures may be required, such as the investor's auditor obtaining an understanding of the investee's control environment as well as performing an evaluation or assessment of prior audit risks and business, financial, and market risks, including how those risks have been managed by the investee. As noted in the 2021 SRC, unlike with the supervision of other auditors by the lead auditor, the investor's auditor may not be able to establish an arrangement with the investee's auditor or investee management under which the investor's auditor would inform, direct, and review work performed by the investee's auditor or obtain information from investee management. Therefore, while obtaining an understanding of the investee's control environment may be beneficial in certain cases, access issues may prevent it.

Further, the SEC staff has previously clarified that ICFR of an equity method investee is not part of the investor's internal control over financial reporting [258] and therefore not part of the assessments required under Sections 404(a) and 404(b) of the Sarbanes-Oxley Act of 2002. Lastly, depending on the financial reporting framework of the investee, financial and market risks may be required to be disclosed within the financial statements. The Board believes that these disclosure requirements, if complied with, should be sufficient in some cases of equity method investees to contribute to an investor's auditor obtaining sufficient appropriate evidence. The Board agrees with the commenter that there may be situations in which further understanding by the investor's auditor of ICFR or the risks of the investee would be necessary. The Board notes that the amendments are principles-based and can be used to appropriately determine the necessary procedures for obtaining sufficient appropriate audit evidence.

A commenter requested clarification regarding a statement made in the 2021 SRC that AS 2101.06b requires the investor's auditor to determine compliance with independence and ethics requirements of the investee's auditor. It is not the Board's intent to change practice with these amendments, but it should be noted that the investor's auditor remains responsible for determining compliance with independence and ethics requirements for the entire audit, including work performed by the investee's auditor. The Board believes that an investor's auditor should determine whether the report of the investee's auditor is satisfactory and may consider performing procedures, such as making inquiries as to the investee's auditor's independence in making this determination.

Footnote 1 to AS 1105.B1 discusses procedures that the investor's auditor may consider performing to determine whether the investee's auditor's report is satisfactory. One commenter suggested replacing the word ''visiting'' in the phrase ''visiting the investee's auditor'' with the phrase ''interacting (*e.g.,* using video conferencing technology or visiting the other auditor) with.'' [259] The commenter offered this alternate phrasing to recognize the current practice of using technology for remote access. Having considered the comment, the Board adopted the amendments as proposed. The word ''visiting'' should not be interpreted as requiring a physical visit or as precluding a virtual visit through the use of technology. Additionally, the Board noted that the procedures in footnote 1 to AS 1105.B1 use the qualifier ''may consider performing;'' thus, the determination of the procedures to perform is at the discretion of the investor's auditor.

Another commenter opined that the amendments do not adequately address the nature and extent of work to be performed by the investor's auditor, including the lack of consideration of knowledge, skill, and ability of the investee's auditor, and noted that the standard used ''reputation'' as a consideration in footnote 1 to AS 1105.B1. Access to the investee's auditor is likely to impact an investor's auditor's ability to evaluate the knowledge, skill, and ability of an investee's auditor. In addition, under the circumstances, inquiries about the reputation and standing of the investee's auditor [260] may uncover issues regarding the professional competence of the investee's auditor. Two commenters raised the issue of non-coterminous year ends, which one of the commenters characterized as ''a common problem,'' and noted a lack of clarity about the nature and extent of work to be performed by an investor's auditor in this situation, particularly with respect to competence, independence, and oversight of an investee's auditor. One of these commenters also raised the issue of differing reporting frameworks and auditing standards.

The Board noted that the amendments are based on certain principles relating to the auditor's responsibility for obtaining sufficient appropriate audit evidence. The amendments are designed to be flexible, considering a variety of situations that exist in practice involving an investee's auditor. For example, in situations of non-coterminous year-ends, U.S. GAAP and IFRS allow for a consistent time lag between the fiscal year-ends of the investor and its equity method investees, which time lag would be reflected in the financial statements of the investor.[261] The amendments

[257] *See* AS 1105.B3, which uses the term ''investee auditor's report.''

[258] *See* SEC Staff FAQ on *https://www.sec.gov/info/accountants/controlfaq.htm*—Question 2. Under this approach, while ICFR related to an investee's financial reporting is out-of-scope, internal control over financial reporting related to an investor's recording of amounts associated with its investment is in-scope.

[259] As proposed and as the Board adopted, footnote 1 to AS 1105.B1 states: ''In determining whether the report of the investee's auditor is satisfactory for this purpose, the auditor may consider performing procedures such as making inquiries as to the professional reputation, standing, and independence of the investee's auditor (under the applicable standards), *visiting* the investee's auditor and discussing the audit procedures followed and the results thereof, and reviewing the audit program and/or working papers of the investee's auditor.'' (emphasis added).

[260] *See* footnote 1 to AS 1105.B1.

[261] *See* Financial Accounting Standards Board Accounting Standards Codifications, Subtopic 323–10, *Investments–Equity Method and Joint Ventures,* paragraph 10–35–6. *See also* International Accounting Standards Board International Accounting Standard 28, *Investments in Associates and Joint Ventures,* paragraph 34.

require obtaining sufficient appropriate audit evidence in support of the investee's financial results, and provide examples of procedures that may need to be performed in addition to reviewing the investee's auditor's report. With regard to differing auditing standards, the investor's auditor is responsible for planning and performing—in compliance with PCAOB standards—the audit of the investor's financial statements (and, if applicable, internal control over financial reporting), including determining what constitutes sufficient appropriate audit evidence.

After considering all of these comments, the Board adopted the amendments as proposed.

Audit Documentation

See Paragraphs .18–.19 to AS 1215

Under existing AS 1215.18, the office of the firm issuing the auditor's report is responsible for ensuring that all audit documentation sufficient to meet the relevant requirements is prepared and retained.

As noted above, the amendments reinforce existing responsibilities of the other auditor to perform work with due care and in compliance with PCAOB standards. Specifically with respect to audit documentation, an amendment to AS 1215.18 reiterates that other auditors must comply with existing documentation requirements, specifically paragraphs .04–.17 of AS 1215, including with respect to the audit documentation that the other auditor provides or makes accessible to the office issuing the auditor's report. Additionally, the amendments to AS 1215.18–.19 conform terminology relating to the use of the newly defined term ''other auditor.'' [262]

A commenter on the 2021 SRC was supportive of the changes proposed in AS 1215.18 while another commenter suggested that the term ''other offices of the firm'' be revised in paragraphs .18–.19 to use another term to clarify that this concept should be applied to offices that are not the office of the firm issuing the auditor's report. The Board considered this comment and determined that the requirements proposed are sufficiently clear, and adopted the requirements as proposed.

Engagement Quality Review—Amendment to AS 1220

See Paragraph .10a of AS 1220

Existing PCAOB standards specify certain procedures the engagement quality reviewer should perform in evaluating the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.[263] In addition, the amendments to AS 1220 require the engagement quality reviewer, in an audit involving other auditors or referred-to auditors, to evaluate the engagement partner's determination that the participation of the engagement partner's firm is sufficient for the firm to carry out the responsibilities of a lead auditor and to report as such on the company's financial statements and, if applicable, ICFR.[264]

Some commenters supported the amendment, while others opposed it, contending that the sufficiency-of-participation determination is not always a significant judgment and thus does not always warrant evaluation by the engagement quality reviewer. Having considered the comments received, the Board adopted the requirement as proposed. Although determining the sufficiency of a firm's participation in the audit might not always be difficult or complicated, the decision that the firm can serve as lead auditor is always a significant judgment because it affects whether it is appropriate for the firm to issue the audit report.[265] Therefore, evaluating the sufficiency-of-participation determination is important for the engagement quality reviewer's conclusion about whether the lead auditor's report is appropriate in the circumstances of a particular audit.[266]

Conforming Amendments and Other Relevant Considerations

This section discusses conforming amendments and other considerations where significant comment was received as part of this rulemaking. The proposed rule text includes conforming amendments discussed in this section and other conforming amendments to PCAOB auditing standards, auditing interpretations, attestation standards, rules, and Form AP.

Communications With Audit Committees

See Paragraph .10e of AS 1301

The 2021 SRC proposed to conform terminology in paragraph .10d of AS 1301, *Communications with Audit Committees,* with new definitions. In particular, the standard would have used ''other auditors'' in lieu of ''independent public accounting firms or persons, who are not employed by the auditor.'' Upon further consideration, the Board determined that the proposed amendment might not be consistent with the original intent of the requirement to communicate all participants in the audit to the audit committee.[267]

The change proposed in the 2021 SRC could have excluded, for example, individuals who work at shared service centers and are supervised by an other auditor, as these individuals would be subsumed by the replacement term ''other auditor.'' To avoid unintended outcomes, the Board did not amend AS 1301.10d.

Separately, the Board made a conforming change to AS 1301.10e to add ''referred-to auditors'' to the phrase ''if significant parts of the audit are to be performed by other auditors.'' The 2017 SRC [268] restored the existing phrase in AS 1301.10e, ''if significant parts of the audit are to be performed by [other auditors],'' that would have been removed by the 2016 Proposal. No subsequent comment was received in this area, and the Board adopted the amendment to AS 1301.10e as proposed in the 2017 SRC.

Certain Required Interactions With the Referred-to Auditor

See Paragraph .53 of AS 2401

The amendments to paragraph .53 of AS 2401, *Consideration of Fraud in a Financial Statement Audit,* conform terminology by replacing ''other independent auditor'' with ''other auditors or referred-to auditors.'' The amendments also replace ''subsidiaries, divisions or branches'' with ''locations or business units, where applicable.'' Further, the amendments include two new footnotes that refer to the definitions of ''engagement team'' and ''referred-to auditor'' in Appendix A of AS 2101, as well as clarify the term

[262] *See* discussion above. In footnote 4 of AS 1215.18, the final amendments do not include the proposed phrase ''in certain circumstances'' after the words ''other related documents'' because it is superfluous.

[263] *See* AS 1220.09.

[264] The corresponding requirements for the engagement partner are in AS 2101.06A–.06C. The amendments added a reference to these requirements and to the definitions of lead auditor, other auditor, and referred-to auditor in AS 2101, in a footnote to AS 1220.10a.

[265] *See* AS 2101.06A.

[266] *See* AS 1220.12.

[267] *See* Auditing Standard on Communications with Audit Committee and Related Amendments to PCAOB Standards, PCAOB Release No. 2012–004 (Aug. 15, 2012).

[268] *See* 2017 SRC at 37.

''business units,'' used in the revised paragraph.

A commenter stated that this amendment would go beyond current practice for the division of responsibility. Having considered the commenter's view, the Board adopted the amendments to AS 2401 substantially as proposed.[269] The Board believes that the amendment does not substantively change the example in AS 2401.53, but merely updates the terminology, aligning it with other amendments in this release.

Amendments Relating to Certain Inquiries and Procedures Concerning Another Auditor

Several PCAOB standards refer to AS 1205.10–.12 when describing certain inquiries and procedures concerning another auditor[270] whose audit report is used as audit evidence in the audit of a company's financial statement (such as the audit report of a service auditor or predecessor auditor). In the majority of these circumstances, the auditor whose report is used in this manner is neither supervised by the lead auditor under AS 1201 nor serving as another independent auditor under AS 1205.[271]

These amendments are amending the standards that refer to rescinded AS 1205.10–.12 by incorporating the relevant statements from those paragraphs into the text of the standards, as was the approach in the 2016 Proposal. The Board discussed comments received on the 2016 Proposal in the 2017 SRC and made no modifications to the proposed amendments.[272]

A commenter on the 2021 SRC believed that the conforming amendment to AS 2601.19 would result in a change to the meaning and related user auditor performance requirement. This commenter suggested revisions to the language to highlight that the user auditor ''may give consideration to'' performing the procedures. The Board believes that the conforming amendment does not change the meaning of the requirement, and that it is sufficiently clear.[273] The amendment states that ''the user auditor should consider performing one or more of the [listed] procedures.'' This language is incorporated in several locations, *e.g.,* AS 2201.B23; paragraphs .18–.19 of AS 2601, *Consideration of an Entity's Use of a Service Organization;* footnote 8 to paragraph .12 of AS 2610, *Initial Audits—Communications Between Predecessor and Successor Auditors;* and AS 3105.55.

The Board adopted the amendments as proposed.

Rescinding AI 10, Part of the Audit Performed by Other Independent Auditors: Auditing Interpretations of AS 1205

The amendments (i) rescind AI 10, the auditing interpretations of AS 1205; and (ii) carry forward, with modifications, as an amendment to AS 2110, a provision in AI 10 that the other accounting firm should consider inquiring of the lead auditor about matters that may be significant to the other accounting firm's own audit (*e.g.,* executive compensation arrangements).[274]

Situations in which the lead auditor divides responsibility for the audit with a referred-to auditor are governed by the new standard, AS 1206. The new standard requires, among other things, that the lead auditor communicate with the referred-to auditor and determine that audit procedures are properly performed, in coordination with the referred-to auditor, with respect to the consolidation or combination of the financial statements of the business units audited by the referred-to auditor into the company's financial statements. For situations in which the lead auditor supervises the work of the other accounting firm, the other auditor's inquiry of the lead auditor is addressed by existing standards.[275] For situations in which the lead auditor divides responsibility for the audit with the other accounting firm, an amendment to AS 2110 carries forward, with modifications, the existing requirement in AI 10 for the referred-to auditor's inquiries of the lead auditor as to matters that may be significant to the referred-to auditor's own audit.[276]

Some commenters on the 2016 Proposal viewed rescinding AI 10 as appropriate, and some others suggested carrying forward all or certain portions of the guidance in AI 10, including the amendment the Board is making to AS 2110. A commenter on the 2021 SRC stated that the conforming amendment to AS 2110.11A was not consistent with the provisions of existing AS 1205.10 since, it asserted, AS 2110.11A goes beyond current practice. The Board rescinded AI 10, as originally proposed. The AI 10 direction for the lead auditor is based on the limited procedures in AS 1205, which the Board rescinded. The provision addressed to the referred-to auditor in AI 10.04–.07 was carried forward to AS 2110.11A, as noted above.[277]

Interim Reviews

See Paragraphs .18b, .39–.40, and .52 of AS 4105

The Board adopted conforming amendments to AS 4105, *Reviews of Interim Financial Information.* The 2016 Proposal included conforming amendments to that standard[278] and requested comment on whether additional changes to the standards were needed for reviews of interim financial information that involve other auditors or referred-to auditors.[279] Three commenters who responded to this question briefly expressed support for addressing interim reviews in the amendments but did not specify any recommended changes. Another commenter stated that any additional requirements should be scalable because the scope of an interim review is substantially less than that of an audit.

The 2017 SRC discussed the comments received on this topic, stated the Board's intent to adopt conforming amendments to AS 4105, and asked for any additional comment.[280] No further comments were submitted on this topic in response to the 2017 SRC or 2021 SRC.

Having considered the comments received, the Board adopted conforming amendments to AS 4105 to appropriately reflect changes to other

[269] The final amendments include ''locations or business units, where applicable,'' instead of only the term ''business units.''

[270] Such inquiries include inquiring about professional reputation and reviewing the work of another auditor.

[271] Under rescinded AS 1205, for these circumstances the auditor who uses the audit may be in a position analogous to that of a principal auditor. *See, e.g.,* AS 1205.14.

[272] *See* 2017 SRC at 35.

[273] The Board does not view the phrase ''should give consideration'' in existing AS 2601.19 as being different from ''should consider,'' which is the terminology used in auditing and related professional practice standards as defined in PCAOB Rule 3101.

[274] *See* AI 10.04–.07; *see also* new paragraph .11A to AS 2110 in this document. The modifications address the format and terminology.

[275] *See, e.g.,* AS 2110.49–.51, which require discussion among engagement team members throughout the audit about significant matters affecting risks of material misstatement.

[276] The Board corrected a footnote number in paragraph .28A of AS 2110. This footnote was incorrectly numbered as 16A in a previous rulemaking release, *Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2018–006 (Dec. 20, 2018), and it is being changed to 16C to reflect correct sequential numbering of footnotes. This change does not affect the content of the footnote.

[277] In addition to the new paragraph, .11A, in AS 2110, *see* above for technical amendments to (i) AS 2110.13 and .28A (changing the numbering of two footnotes, to eliminate duplication) and (ii) AS 2110.64 (adding a footnote reference to AS 2101.11 and .12, to highlight relevant existing requirements for multi-location engagements).

[278] *See* 2016 Proposal at A3–32.

[279] *See* Question 58 in the 2016 Proposal at A4–62.

[280] *See* 2017 SRC at 36.

PCAOB standards in this rulemaking and preserve the scalable approach to interim reviews. The conforming amendments have been revised from the form in which they were proposed in 2016. As adopted, footnote 11 to AS 4105.18b clarifies that, if an accountant (*i.e.,* auditor) who conducts a review of interim financial information obtains a report from another accountant engaged to conduct a review of interim financial information of significant components of the reporting entity or its other business units, the accountant that obtains the report is ordinarily in a position similar to that of, as applicable, (i) a lead auditor that obtains the results of the work of an other auditor (*see generally* AS 1201 (audit supervision) and AS 2101 (audit planning)) or (ii) an investor's auditor that obtains a report from an investee's auditor (*see generally* Appendix B of AS 1105 (audit evidence)).

Application to Audits of Brokers and Dealers

The amendments, if approved by the SEC, will apply to audits of brokers and dealers as defined in Sections 110(3)–(4) of Sarbanes-Oxley.[281] The proposing releases solicited comment on such applicability. No commenters opposed, and several commenters supported, applying the amendments to audits of brokers and dealers. In response to the 2021 SRC, one commenter said that it was not aware of any strong arguments that would indicate that the audits of brokers and dealers should be excluded from the application of the proposed amendments, and the commenter expressly supported applying the proposed amendments to audits of brokers and dealers. One commenter said that it did not believe that the revisions discussed in the 2021 SRC presented specific issues regarding audits of brokers and dealers.

As the Board noted in the 2016 Proposal, the auditing standards that currently govern the use of other auditors and referred-to auditors in audits of brokers and dealers are the same as those for audits of issuers. The application of the amendments to audits of brokers and dealers will continue this approach.

Staff analysis of PCAOB inspections data for audits of brokers and dealers indicates that there are no brokers or dealers that are currently issuers, although some of the largest brokers and dealers are subsidiaries of issuers. Information from PCAOB inspections and from annual reports filed by registered firms indicates that other auditors played a substantial role[282] in a small number of audits of brokers and dealers.[283] Further, information obtained by PCAOB staff has not identified any audits of brokers and dealers in which the lead auditor divided responsibility for the audit with another accounting firm.

The Board's determination that the amendments will apply to audits of brokers and dealers is based on the observation that auditing plays a key role in enhancing the reliability of financial information provided by brokers and dealers, which is important to investor protection. The audit of brokers and dealers is intended to mitigate problems related to information asymmetry between customers of brokers and dealers, who use the services of brokers and dealers to invest in securities and other financial instruments, and management of brokers and dealers, who prepare financial information. This information asymmetry between customers and management of brokers and dealers may be significant. Customers of brokers and dealers are likely to be numerous, geographically distributed, and not expert in the management or operation of brokers and dealers. This information asymmetry makes the role of auditing important in enhancing the reliability of financial information. In addition, the audit of brokers and dealers may also help attenuate information asymmetry between management of brokers and dealers and other users of financial statements, such as counterparties and regulatory authorities.

The amendments are not expected to have a widespread impact on the audits of brokers and dealers that are not subsidiaries of issuers, since there are likely few instances in which such audits involve the use of other auditors. However, in those instances in which other auditors are used, the expected improvements in audit quality described above will benefit the customers of the broker or dealer, along with investors and the capital markets. Because of the scalability of the risk-based requirements, the costs of performing the procedures are unlikely to be disproportionate to the benefits of the procedures.

Effective Date

The Board has determined that the amendments will take effect, subject to approval by the SEC, for audits of financial statements for fiscal years ending on or after December 15, 2024.

In the proposing releases, the Board sought comment on the amount of time auditors would need before the proposed amendments would become effective, if adopted by the Board and approved by the SEC. A number of commenters on the 2021 SRC recommended that the Board provide an effective date at least two years after Board adoption and SEC approval. Some preferred, if SEC approval were to occur in the last half or quarter of the year, an effective date at least three years afterwards. In support of the time needed before effectiveness, commenters offered that audit firms will need enough time to implement the amended standards throughout the firm (such as through methodology, tools, guidance, quality control system changes, and training) and to discuss and coordinate implications of the amendments with other auditors and referred-to auditors. Some commenters also stated that because the amendments relate to matters that occur at the beginning of the audit, the implementation needs to occur before the beginning of the fiscal year of the financial statements to be audited.

The Board recognized the preferences expressed by commenters. It also appreciated the efforts already undertaken by many audit firms to raise their standards of practice in advance of the adoption of these amendments. The effective date the Board adopted is designed to provide all auditors with a reasonable period of time to implement the amendments, without unduly delaying the intended benefits resulting

[281] For attestation engagements in conjunction with Exchange Act Rule 17a–5, 17 CFR 240.17a–5, the supervision requirements of Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers,* or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers,* apply to the supervision of the work of other auditors. *See Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–007, at A4–30 (Oct. 10, 2013).

[282] *See* PCAOB Rule 1001(p)(ii) (defining the phrase ''play a substantial role in the preparation or furnishing of an audit report'').

[283] Firms that conduct non-issuer audits in accordance with PCAOB standards, including audits of brokers and dealers reporting under Exchange Act Rule 17a–5, are not required to file a report on Form AP regarding such audits. *See Staff Guidance: Form AP, Auditor Reporting of Certain Audit Participants, and Related Voluntary Audit Report Disclosure Under AS 3101, The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion* (Dec. 17, 2021), at 3. Thus, unlike in the case of audits of issuers (including EGCs), Form AP data on the extent of use of other auditors and referred-to auditors in audits of brokers and dealers is not available.

from these improvements to PCAOB standards.[284]

D. Economic Considerations and Application to Audits of Emerging Growth Companies Economic Analysis

The Board is mindful of the economic impacts of its standard setting. This economic analysis describes the economic baseline, economic need, expected economic impacts of the amendments, and alternative approaches considered. Because there are limited data and research findings available to estimate quantitatively the economic impacts of the amendments, the Board's economic discussion is qualitative in nature. However, where practicable, the analysis incorporates quantitative information, including analysis of Form AP data and PCAOB inspections findings.

The Board sought information relevant to the economic analysis over the course of this rulemaking.[285] To the extent that commenters expressed views related to the economic analysis, commenters generally found the economic analysis in the 2016 Proposal and the discussion of economic topics in the 2017 and 2021 SRCs to be reasonable. Commenters did not provide additional quantitative data or research that could be used in the analysis. The Board considered all comments received and has developed the following economic analysis that evaluates the expected benefits and costs of the final amendments, discusses potential unintended consequences, and facilitates comparison to alternative actions considered.

Baseline

The discussion above describes current PCAOB standards that apply specifically when other auditors and referred-to auditors participate in an audit and the influence of other standard setters on audit practice in this area. This section expands on that discussion by describing the economic baseline against which the impact of the amendments can be considered. Specifically, this section:

- Discusses the extent of the use of other auditors and referred-to auditors by analyzing data in AuditorSearch, which is the PCAOB's public Form AP database.[286]
- Summarizes auditing practices related to the use of other auditors and referred-to auditors, including PCAOB staff analysis of audit firm methodologies and data on deficiencies in audits that involve other auditors.
- Provides a concise survey of academic research on the use of other auditors and its impact on audit quality.

Extent of the Use of Other Auditors and Referred-to Auditors

As discussed in the 2016 Proposal, many companies have significant operations in jurisdictions outside the country or region of the lead auditor.[287] Audits of such multinational businesses often require the participation of accounting firms other than the lead auditor and can often involve multiple other firms.[288] The use of other auditors is also more prevalent in audits of larger companies audited by larger accounting firms.[289] In addition, work performed by other auditors can comprise a significant share of a given audit.[290]

Observations in the 2016 Proposal regarding the use of other auditors and referred-to auditors are confirmed by more specific information that the PCAOB has subsequently received and made available to the public on its website. After June 30, 2017, registered public accounting firms began to report certain information about the participation of other accounting firms in audits on PCAOB's Form AP. Figures 2, 3, and 4 present staff analysis of Form AP filings between January 1, 2021, and December 31, 2021, and update similar information presented in the 2021 SRC.[291]

[284] *See* Auditing Accounting Estimates, Including Fair Value Measurements and Amendments to PCAOB Auditing Standards, PCAOB Release No. 2018–005 (Dec. 20, 2018) (providing an effective date approximately one year after PCAOB adoption); Amendments to Auditing Standards for Auditor's Use of the Work of Specialists, PCAOB Release No. 2018–006 (Dec. 20, 2018) (same).

[285] *See* 2016 Proposal at 30–49; 2017 SRC at 42; 2021 SRC at 62.

[286] *See https://pcaobus.org/resources/auditorsearch. See also* Improving the Transparency of Audits: Rules to Require Disclosure of Certain Audit Participants on a New PCAOB Form and Related Amendments to Auditing Standards, PCAOB Release No. 2015–008 (Dec. 15, 2015). Form AP provides information on other accounting firms, but not individual accountants at those firms. Hence, the terms ''other auditors'' and ''referred-to auditors'' in the analysis presented in this section refer only to accounting firms.

[287] *See* 2016 Proposal at 6.

[288] *See id.* at 6 note 4.

[289] *See id.* at 7.

[290] *See id.* at 6–7 and note 5 (noting that in audits selected by the PCAOB for inspection in 2013 and 2014 that involved other auditors, the other auditors audited on average between one-third and one-half of the total assets and total revenues of the company being audited).

[291] *See* 2021 SRC at 49–55 (providing data based on Form AP filings in 2020). The analysis of Form AP data presented in Figures 2, 3, and 4 is limited to issuers other than investment company vehicles and employee benefit plans.

Figure 2. Extent of Use of Other Auditors (2021)

	Percentage of audits that use other auditors	Maximum number of other auditors used in an audit
All issuer audits	26%	63
By audit firm type[292]		
U.S. GNF	39%	27
Non-U.S. GNF	58%	63
U.S. NAF	7%	10
Non-U.S. NAF	13%	17
By issuer domicile		
U.S. issuers	23%	27
Non-U.S. issuers	41%	63
By issuer size		
Fortune 500 issuers	68%	27
Large accelerated filers	57%	63
Accelerated filers	36%	14
Non-accelerated filers	12%	21

Sources: 2021 Form AP data obtained from PCAOB's AuditorSearch database; issuer groups determined using data from Audit Analytics and Standard & Poor's.

Note: The term "other auditors" as used in this table includes referred-to auditors and refers only to other accounting firms and not individual accountants at those firms.[293]

The statistics presented in Figure 2 describe the percentage of issuer audits that use other firms and the maximum number of other firms used in an individual audit, based on 2021 Form AP filings. The results are largely consistent with the 2020 Form AP data presented in the 2021 SRC and indicate that other firms are involved in many audits of issuers.

Overall, other firms are involved in about 26 percent of all issuer audit engagements.[294] Their use is especially

[292] Global network firms (''GNFs'') are the member firms of the six global accounting firm networks that include the largest number of PCAOB-registered non-U.S. firms (BDO International Ltd., Deloitte Touche Tohmatsu Ltd., Ernst & Young Global Ltd., Grant Thornton International Ltd., KPMG International Cooperative, and PricewaterhouseCoopers International Ltd.). The discussion in this release uses ''U.S. GNF'' to refer to a GNF member firm based in the United States, and ''non-U.S. GNF'' to refer to a GNF member firm based outside the United States. Non-affiliate firms (''NAFs'') are both U.S. and non-U.S. accounting firms registered with the Board that are not GNFs. Some of the NAFs belong to international networks.

[293] Disclosures on Form AP include the name, extent of participation, and headquarters location of an other accounting firm that participated in an audit and contributed 5% or more of the total audit hours. For firms that contributed less than 5% of the total audit hours, the number of firms and their aggregate extent of participation is disclosed. Form AP reporting is required not only in situations when an other accounting firm performed part of an audit under AS 1201 or AS 1205, but also when the personnel of an other accounting firm, but not the firm itself, was involved in the lead auditor's audit. *See* Form AP, Item 3.2 (Note) (providing that an other accounting firm participated in the lead auditor's audit for Form AP reporting purposes if any of its principals or professional employees was subject to supervision under AS 1201). Thus, not all of the audits in the table may have involved, and not all of the firms in the table may have been, other auditors that performed part of the audit under AS 1205 or were themselves supervised under AS 1201.

[294] The 2021 SRC presented data showing that other firms were involved in about 30 percent of all issuer audit engagements. *See* 2021 SRC at 51. The change from 30 percent in the 2021 SRC to 26

common in audits performed by firms that are members of global networks; about 39 percent of U.S. GNF engagements and about 58 percent of non-U.S. GNF engagements involved the use of other firms. In comparison, only about seven percent of U.S. NAF and 13 percent of non-U.S. NAF audit engagements involved other firms.

When analyzed from the perspective of the domicile of the issuer, other firms are involved in about 23 percent of audit engagements of issuers domiciled in the U.S., and about 41 percent of audit engagements of issuers domiciled outside the U.S. Alternately, when analyzed by issuer size, other firms are involved in about 68 percent of Fortune 500 issuer audits and about 57 percent of large accelerated filer audits.[295] In contrast, only about 36 percent of accelerated filer audits and about 12 percent of non-accelerated filer audits involved the use of other firms.

Some issuer audits involve many other firms, particularly when the issuer is large. For example, the audit of one Fortune 500 issuer involved 27 other firms and the audit of one large accelerated filer involved 63. By contrast, the maximum number of other firms used on an audit of an accelerated filer and a non-accelerated filer was somewhat lower, at 14 and 21 other firms, respectively. The maximum number of other firms used is highest for issuer audits conducted by GNFs. For example, one non-U.S. GNF audit involved 63 other firms and one U.S. GNF audit used 27. Non-affiliated firms can also use multiple other firms when conducting issuer audits; on one audit a non-U.S. NAF used 17 other firms and one U.S. NAF audit involved 10.

Figure 3. Audits Involving Multiple Other Auditors (2021)

	Percentage of audits involving other auditors that involve:			
	2 or more other auditors	5 or more other auditors	10 or more other auditors	20 or more other auditors
All issuer audits	61%	28%	11%	2%
By audit firm type				
U.S. GNF	66%	32%	11%	1%
Non-U.S. GNF	71%	31%	16%	4%
U.S. NAF	19%	2%	0%	0%
Non-U.S. NAF	34%	5%	5%	0%
By issuer domicile				
U.S. issuers	61%	28%	9%	1%
Non-U.S. issuers	64%	29%	14%	4%

Sources: 2021 Form AP data obtained from PCAOB's AuditorSearch database; issuer groups determined using data from Audit Analytics.

Note: The term "other auditors" as used in this table includes referred-to auditors and refers only to other accounting firms and not individual accountants at those firms.

The statistics shown in Figure 3 describe how often more than one other firm is used when an audit involves such use, based on 2021 Form AP filings. The results are largely consistent with the 2020 Form AP data presented in the 2021 SRC and indicate that when other firms are used, it is common that multiple other firms are used.[296] For example, among all issuer audits involving the use of other firms, about 61 percent involved two or more other firms, about 28 percent involved five or more, about 11 percent involved ten or more, and about two percent involved twenty or more. When examined by the domicile of the issuer, the results are similar.

percent in this release appears to be mostly due to the recent increase in special purpose acquisition company audits, which rarely involve the participation of other firms. Between 2018 (the first full year of Form AP data) and 2020 (the year presented in the 2021 SRC), the percentage of audits that use other firms remained relatively stable.

[295] For an explanation of accelerated filer criteria, see *https://www.sec.gov/corpfin/secg-accelerated-filer-and-large-accelerated-filer-definitions.*

[296] Form AP data also indicates that when multiple other auditors are used, it is common for the other auditors to be located in multiple countries outside the lead auditor's country.

When examined by audit firm type, the data shows that GNFs tend to use more other firms than NAFs do. For example, in issuer audits conducted by U.S. GNFs that involved other firms, about 66 percent involved two or more other firms, about 32 percent involved five or more, about 11 percent involved ten or more, and about one percent involved twenty or more. Similarly, in audit engagements of issuers conducted by non-U.S. GNFs that involved other firms, about 71 percent involved two or more other firms, about 31 percent involved five or more, about 16 percent involved ten or more, and about four percent involved twenty or more. By contrast, in audit engagements of issuers conducted by U.S. NAFs that involved other firms, only about 19 percent involved two or more other firms, and about two percent involved five or more. In audit engagements of issuers conducted by non-U.S. NAFs that involved other firms, about 34 percent involved two or more other firms, and about five percent involved five or more.

Figure 4. Other Auditors' Share of Total Audit Hours (2021)

	Percentage of audits involving other auditors where other auditors performed:[297]	
	10% or more of total audit hours	30% or more of total audit hours
All issuer audits	52%	19%
By audit firm type		
U.S. GNF	52%	13%
Non-U.S. GNF	58%	34%
U.S. NAF	37%	18%
Non-U.S. NAF	63%	41%
By issuer domicile		
U.S. issuers	48%	12%
Non-U.S. issuers	61%	35%

Sources: 2021 Form AP data obtained from PCAOB's AuditorSearch database; issuer groups determined using data from Audit Analytics.

Note: The term "other auditors" as used in this table includes referred-to auditors and refers only to other accounting firms and not individual accountants at those firms.

The statistics presented in Figure 4 describe the share of audit work performed by other firms, based on 2021 Form AP filings. The other firms' share of total audit hours provides a simple measure of the significance of their work, but may not reflect the level of risk associated with that work. The results are largely consistent with the 2020 Form AP data presented in the 2021 SRC and show that work performed by other firms can, however, account for a significant share of the audit. To illustrate this finding, consider the following data regarding the frequency with which other firms' hours exceeded a relatively lower (10 percent of total audit hours) and relatively higher (30 percent) threshold of other auditor involvement.

[297] Using a higher threshold of other firms' involvement (50 percent of total audit hours) would further reduce the percentages reported in Figure 4. Specifically, in audits of issuers that involved other firms, other firms performed more than 50 percent of total audit hours in about six percent of all issuer audits, about two percent of U.S. GNF audits, about 16 percent of non-U.S. GNF audits, about four percent of U.S. NAF audits, and about 29 percent of non-U.S. NAF audits.

Looking first at the relatively lower threshold of involvement, in audits of issuers that involved other firms, other firms performed more than 10 percent of total audit hours in about 52 percent of all issuer audits, about 52 percent of U.S. GNF audits, about 58 percent of non-U.S. GNF audits, about 37 percent of U.S. NAF audits, and about 63 percent of non-U.S. NAF audits. When examined by the domicile of the issuer, other firms performed more than 10 percent of the total audit hours in about 48 percent of audits of issuers domiciled in the U.S., and about 61 percent of audits of issuers domiciled outside the U.S.

Turning to the relatively higher threshold of involvement, in audits of issuers that involved other firms, other firms performed more than 30 percent of the total audit hours in about 19 percent of all issuer audits, about 13 percent of U.S. GNF audits, about 34 percent of non-U.S. GNF audits, about 18 percent of U.S. NAF audits, and about 41 percent of non-U.S. NAF audits. Other firms performed more than 30 percent of the total audit hours in about 12 percent of audits of issuers domiciled in the U.S., and about 35 percent of audits of issuers domiciled outside the U.S.

Auditing Practice Related to the Use of Other Auditors and Referred-to Auditors

PCAOB Staff Analysis of Audit Methodologies

PCAOB staff has reviewed the methodologies of firms related to the use of other auditors and referred-to auditors. Specifically, the staff compared methodologies of GNFs and methodologies commonly used by smaller U.S. firms to current PCAOB standards and the amendments. The staff performed this analysis to understand the extent to which firms would need to update their methodologies to implement the amendments and new standard.

In general, the staff observed that the methodologies of larger firms already incorporate some of the concepts included in the amendments and new standard. For example, methodologies of larger firms increasingly emphasize the responsibility of the lead auditor for overseeing the work of other auditors using a risk-based approach. Some larger firms have also made changes to their audit methodologies in recent years to encourage a greater level of supervision by the lead auditor, such as more frequent and comprehensive communications with other auditors and review of other auditors' work papers in areas of significant risk. Larger firms have also continued to issue practice alerts, templates, and other guidance to emphasize that the lead auditor should be sufficiently involved in the work of other auditors. Smaller U.S. firms' methodologies generally do not require the lead auditor to perform or consider supervisory procedures beyond the requirements of AS 1205.

The staff's analysis of audit methodologies also identified variation in the extent to which larger firms have already incorporated the amendments and new standard in their methodologies. For example, the staff observed that some larger firms' methodologies do not yet incorporate the amendments to supervisory procedures in multi-tiered audits or the amendments to AS 1220 regarding engagement quality reviews. Similarly, many firms may need to revise their approaches to determining whether the firm's participation in an audit is sufficient for it to serve as lead auditor.

Commenters on the 2016 Proposal who addressed audit methodologies regarding the use of other auditors and referred-to auditors generally agreed that the Proposal accurately described existing audit practices. Some of those commenters indicated that many firms, particularly larger and mid-size firms, have updated their methodologies to comply with the relevant standards of the PCAOB, IAASB, and ASB. Another commenter indicated that firms utilize a range of approaches to group audits to address the varied business structures of their audit clients.

A commenter on the 2021 SRC observed the increased use of technology in auditing, which accelerated in response to the global COVID–19 pandemic. Some stated that, as a result of the use of technology, audit firms increasingly digitize their documentation and are able to communicate more efficiently. Others observed that the increased use of technology has permitted the remote performance of audit work, and that physical location is not as important as it was previously. One commenter noted changes in the management of audits, including the increased use of shared service centers and the existence of more complex group audit structures. Some commenters, however, stated that they had not seen significant changes in auditor practices related to the use of other auditors.

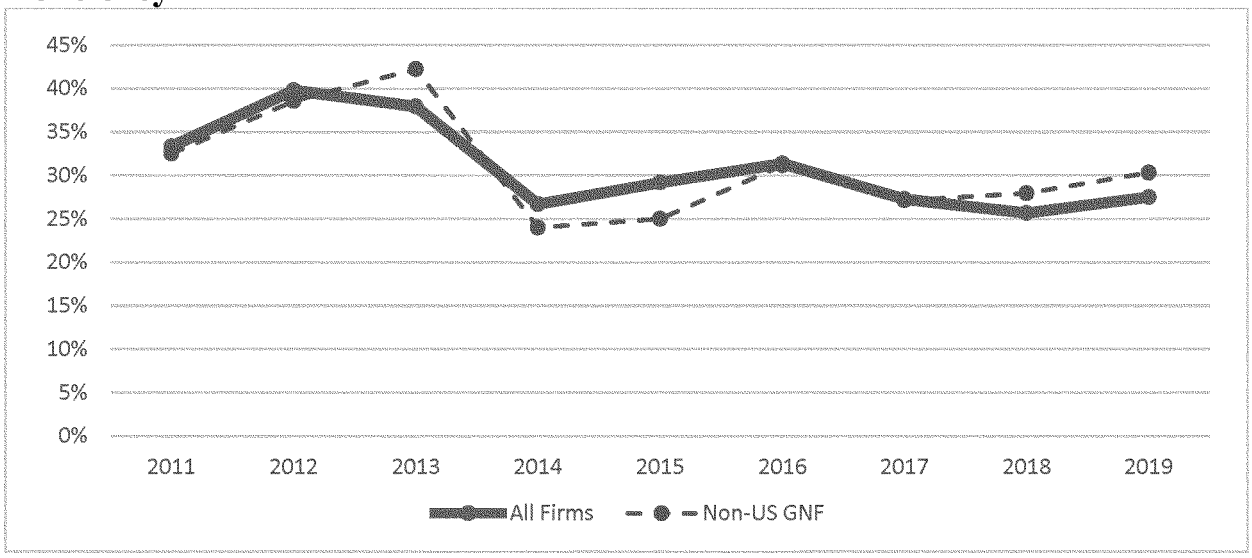
Deficiencies in Audits Involving Other Auditors

Previous discussion in this release describes observations from recent PCAOB inspections and PCAOB and SEC enforcement cases related to the work of other auditors and lead auditors. This section supplements the discussion by describing data regarding deficiencies in work performed by other auditors (or ''referred work engagements'').

Over the last decade, PCAOB inspections staff has observed Part I.A deficiencies [298] in roughly 25 to 45 percent of referred work engagements selected for review. As shown in Figure 5, following a peak deficiency rate in 2012 and 2013 of approximately 40 percent, deficiency rates declined and have remained relatively consistent since then at approximately 30 percent.

[298] A Part I.A deficiency is identified through inspection and included in a PCAOB inspection report when it is ''of such significance that the Board believes that the firm, at the time it issued its audit report, had not obtained sufficient appropriate audit evidence to support its opinion on the issuer's financial statements and/or ICFR.'' *See* PCAOB, *PCAOB Inspection Procedures: What Does the PCAOB Inspect and How Are Inspections Conducted?*, available at *https://pcaobus.org/oversight/inspections/inspection-procedures.*

Figure 5. Percentage of Referred Work Engagements with a Part I.A Deficiency



Academic Research on the Use of Other Auditors

As discussed above, audits involving other auditors often use other auditors located in different countries, and may use multiple other auditors, particularly in audits of multinational companies. Academic research on the challenges of distributed work (but not exclusively on auditing) finds that coordination and communication problems may arise when: (i) work is conducted by teams distributed across cities, countries, or continents; (ii) there are differences in language, culture, or regulation; or (iii) teamwork is required that involves a number of interdependent activities.[299]

If the cost to the auditor of overcoming these challenges (*e.g.,* through additional supervision of other auditors) exceeds the lead auditor's perception of the benefits of doing so (*e.g.,* in terms of reduced risks of litigation, reputational loss, and regulatory sanction, as a result of improving audit quality), then audit quality may suffer.[300] The impact on audit quality could be especially significant because the lead auditor makes important decisions about how the audit is performed, including whether the lead auditor performs a sufficient portion of the audit to issue the audit report.

Although relatively few empirical studies have explicitly examined the relationship between the use of other auditors and audit quality, several papers have been published recently that shed light on this issue. This growing body of research suggests that there is a relationship between the use of other auditors and audit quality, and that the facts and circumstances of the audit may be influential in determining whether this is a positive or negative relationship.[301]

Need

This section discusses the problem that the amendments are intended to address and explains how the amendments are expected to address it. Specifically, an incentive problem may arise from information asymmetries between investors and the lead auditor and between the lead auditor and other auditors, among other factors. The amendments will help address the problem by increasing the accountability of the lead auditor and requiring a more uniform, risk-based approach to the lead auditor's planning and supervision of the work of other auditors. The amendments aim to clarify and strengthen the lead auditor's planning and supervisory requirements to provide lead auditors with better direction and a stronger regulatory incentive to more consistently produce high quality audits when using other auditors. The amendments will increase the lead auditor's involvement in, and evaluation of, the work of other auditors, enhance the ability of the lead auditor to prevent or detect deficiencies in the work of other auditors, and facilitate improvements in the quality of the work of other auditors.

Problem To Be Addressed

As discussed in the 2016 Proposal, incentive problems may arise from information asymmetry between investors and the lead auditor.[302] Specifically, in audits involving other auditors, a market failure [303] may be caused, at least in part, by an information asymmetry between investors and the lead auditor regarding the lead auditor's effort in supervising other auditors. Investors, for example, may be uncertain about the procedures performed by the lead auditor to oversee the work of other auditors, leading to uncertainty about audit quality and the risks associated with the use of other auditors. The uncertainty may reduce public confidence in financial information, decrease the efficiency of capital allocation decisions, and increase the cost of capital.[304]

Because of this information asymmetry and other factors such as cost considerations, the lead auditor may not be adequately motivated to (i) gather information about the competence of, and work performed by,

[299] *See* 2016 Proposal at 29–30 and notes 61–64; *see also* 2021 SRC at 55 and note 147.

[300] *See* 2016 Proposal at 29 note 61.

[301] *See* 2016 Proposal at 29 note 61; s*ee also* 2021 SRC at 56 notes 148–149 (citing academic research); *see also* Elizabeth Carson, Roger Simnett, Ulrike Thürheimer, and Ann Vanstraelen, *Involvement of Component Auditors in Multinational Group Audits: Determinants, Audit Quality, and Audit Fees* (2022) (accepted for publication in Journal of Accounting Research; available at *https://doi.org/10.1111/1475-679X.12418*) (''[I]nvolvement of component auditors benefits audit quality as long as the principal auditor conducts a substantial amount of work. Once the involvement of component auditors exceeds a certain level, audit quality decreases.'').

[302] *See* 2016 Proposal at 30–33 and notes 66–73.

[303] The term ''market failure'' refers to a situation in which markets fail to function efficiently. *See* 2016 Proposal at 31 note 67.

[304] *See* 2016 Proposal at 37 note 78.

the other auditor, or (ii) monitor and review (*i.e.,* adequately supervise) the other auditor's work, leading to a moral hazard problem.[305]

Further, as discussed in the 2021 SRC, incentive problems may also arise from information asymmetry between lead auditors and other auditors.[306] For example, as described in the 2016 Proposal, under current standards lead auditors may not have sufficient access to information regarding the work performed by other auditors.[307] Other auditors also may not be sufficiently incentivized to perform sufficient and appropriate audit procedures. A commenter on the 2021 SRC agreed that information asymmetry may exist between auditors.

How the Amendments Will Address the Need

The amendments are expected to increase the accountability of the lead auditor and require a more uniform, risk-based approach to the lead auditor's oversight of other auditors. Specifically, the amendments rescind AS 1205 and amend AS 2101 and AS 1201 to apply in all situations in which the lead auditor involves other auditors. The amendments include additional risk-based requirements to provide the lead auditor with more specificity and clarity about the lead auditor's supervisory responsibilities.

Strengthening the performance requirements for lead auditors can augment the lead auditor's incentive to monitor the performance of other auditors through adequate supervision of other auditors' work. By addressing more clearly the responsibilities of the lead auditor (*e.g.,* for planning the audit and supervising other auditors), the amendments position the lead auditor to align the incentives and auditing behaviors of other auditors with investors' interests in reducing the risks of material misstatement in the financial statements. In particular, the amendments should incentivize lead auditors to anticipate potential problems that may arise in their relationships with other auditors and take action to address such matters. Investors should form expectations of audit quality under the more standardized and improved supervisory framework, and thus should have greater certainty about the lead auditor's approach to supervision and the quality of the audit.[308] Additionally, by adding specificity and reducing ambiguity regarding the lead auditor's responsibilities, the amendments address risks arising from potential systematic, welfare-decreasing auditor and investor errors in judgment.[309]

Examples of amendments that are expected to strengthen and clarify the performance requirements for lead auditors and augment their incentive to monitor the performance of other auditors include the following:

- In audits involving other auditors, the amendments to AS 2101 and AS 1220 will enhance the requirements related to the engagement partner's assessment of whether his or her firm performs sufficient work on the audit to warrant serving as lead auditor, and the engagement quality reviewer's evaluation of that assessment. In addition, in audits that involve work performed by other auditors regarding locations or business units, the lead auditor's involvement (through planning and performing audit procedures and supervising other auditors) will be required to be commensurate with the risks of material misstatement associated with those locations or business units. The amendments also describe the actions that the lead auditor should take with respect to each other auditor to determine compliance with independence and ethics requirements. Further, the amendments have specific requirements regarding the lead auditor's responsibilities with respect to the other auditors' knowledge, skill, and ability.
- Currently, lead auditors can apply two different approaches: supervising the other auditors' work under AS 1201 or using the work and reports of other auditors under AS 1205. Under the amendments, AS 1205 will be rescinded, and lead auditors will be required to supervise other auditors under the amended AS 1201 when they assume responsibility for the other auditors' work.

The amendments to AS 1201 provide additional direction to the lead auditor on how to apply the principles-based provisions of the standard to the supervision of other auditors. For example, the amendments require the lead auditor to: (i) inform other auditors of the scope of their work and, with respect to such work requested, the identified risks of material misstatement, tolerable misstatement, and clearly trivial amounts (if determined); (ii) obtain and review the other auditor's written description of procedures to be performed, and discuss with, and communicate in writing to, the other auditor any needed changes to the planned procedures; (iii) obtain and review a written affirmation from the other auditor as to whether the other auditor has performed work in accordance with the lead auditor's instructions, and, if it has not, a description of the nature of, and an explanation of the reasons for, the instances where work was not performed in accordance with the instructions, including (if applicable) a description of the alternative work performed; (iv) direct other auditors to provide specified documentation regarding work performed; and (v) determine whether the other auditor performed the work as instructed and whether additional audit evidence needs to be obtained.[310]

Economic Impacts

This section discusses the expected benefits and costs of the amendments and potential unintended consequences. Overall, the magnitude of the benefits and costs is likely to be affected by the extent to which other auditors are involved in audits, including the number of other auditors used and the amount of time spent by other auditors. Benefits and costs are also likely to be affected by the nature of the work and the risks involved in the work performed by other auditors, because more complex work and work in areas of greater risk will likely require greater supervisory efforts by the lead auditor. In addition, benefits and costs are likely to be affected by the degree to which accounting firms have already adopted audit practices that are similar to those the amendments will require. Overall, the Board expects that the benefits of the amendments will justify any costs and unintended negative effects.

Benefits

As discussed above, the amendments are expected to benefit investors and the public by mitigating information asymmetries between investors and the lead auditor and between the lead auditor and other auditors. The new requirements should strengthen the

[305] The term ''moral hazard'' refers to a situation in which an agent could take actions (such as not putting forth sufficient effort) that are difficult for the principal to monitor and would benefit the agent at the expense of the principal. *See* 2016 Proposal at 31 note 69; *Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2018–006 (Dec. 20, 2018), at 40–42.

[306] *See* 2021 SRC at 61.

[307] *See* 2016 Proposal at 19–21.

[308] *See* 2016 Proposal at 35 note 75 (citing academic research).

[309] *See* 2021 SRC at 61 note 175.

[310] The amendments for the planning and supervision of other auditors also include provisions, in AS 1201 and AS 2101, that are designed to make the standard scalable for multi-tiered audits in which the lead auditor may seek assistance from a first other auditor in supervising second other auditors.

supervision of other auditors, which in turn should improve audit quality and increase the likelihood that auditors detect material misstatements in the financial statements and material weaknesses in internal controls over financial reporting. Improving the quality of audits and financial reporting can reduce investors' uncertainty about the information being provided in company financial statements, foster increased public confidence in the financial markets, and enhance capital formation. In particular, improving the quality of the information available to financial markets can increase the efficiency of capital allocation decisions and decrease the cost of capital.[311]

Specifically, the amendments address audit deficiencies of other auditors that continue to be observed in practice (see Figure 5 above) and provide more transparency to investors about how lead auditors supervise other auditors by increasing the accountability of the lead auditor and introducing a more uniform, risk-based approach to the lead auditor's supervision of other auditors. The amendments require the lead auditor to determine the sufficiency of its participation in the audit based on quantitative and qualitative factors and be better informed about the qualifications and performance of the other auditor. The amendments also increase the requirements for the lead auditor to monitor and review (*i.e.,* supervise) the work of other auditors.

Investors also may benefit from the amendments indirectly. For example, under existing standards, the auditor is required to communicate to the audit committee its overall audit strategy, significant risks, and results of the audit, including work performed by other auditors, among other things.[312] Because of the lead auditor's enhanced involvement in the work of other auditors, the quality of communications with audit committees could also be enhanced, specifically as it relates to risks of material misstatements in the financial statements related to the component(s) of the company audited by the other auditor(s). Such enhanced discussions with the audit committee could improve the audit committee's oversight of the audit by highlighting areas where audit committees and companies should increase attention to ensure the quality of their financial statements, including related disclosures. This increased attention by audit committees and companies could result in higher quality financial reporting, which benefits investors.

The Board expects that the amendments will lead to improved supervision of other auditors' work and an increase in audit quality. Auditors also may benefit from the amendments due to the reduced risk of failure to detect material misstatements. As a result, associated costs such as the risk of litigation, regulatory sanction, or reputational loss faced by auditors could decrease.

Some commenters provided information responding to the discussion of potential benefits to investors and other financial statement users. One commenter said that many of the changes contemplated in the 2016 Proposal would improve the quality of audits involving other auditors and benefit investors. Another commenter stated that the proposed changes should decrease the overall likelihood of misstatement by enhancing the verification process of information relied upon by other auditors, and therefore should serve as added safeguards for investors and the general public through their ability to rely on the financial statement data and related disclosures. Another commenter said that the proposed amendments would provide more transparency about audits involving other auditors and would therefore benefit investors and the public. Similarly, in response to the 2021 SRC, commenters agreed that the amendments would enhance audit quality and protect the interests of investors. These comments are consistent with the benefits identified in this section.

Costs

The Board recognizes that imposing new requirements may result in additional costs to auditors and the companies they audit.

Auditors may incur certain fixed costs (costs that are generally independent of the number of audits performed) related to implementing the amendments. These include costs to update audit methodologies and tools, and to prepare training materials and conduct training. Large firms are likely to update methodologies using internal resources, whereas small firms are more likely to purchase updated methodologies from external vendors.[313] The costs to update methodologies likely depend on the extent to which the new requirements have already been incorporated in the firms' current methodologies. For firms that have implemented supervisory procedures like those required by the amendments, the costs of updating methodologies may be lower than for firms that currently do not have such procedures. Larger accounting firms, which often perform audits involving other auditors, will likely take advantage of economies of scale by distributing fixed costs over a larger number of audit engagements. Smaller accounting firms, which less often perform audits that involve other auditors, will likely distribute their fixed costs over fewer audit engagements.

In addition, auditors may incur certain engagement-level variable costs related to implementing the amendments. For example, to implement the additional requirements, both lead auditors and other auditors may:

- Increase the number of engagement team members and engagement quality reviewer assistants; or
- Increase the amount of time incurred by the existing team members and engagement quality reviewers and their assistants.[314]

The magnitude of the variable costs likely depends on several factors. For firms that have required greater lead auditor involvement and already have applied some of the new requirements in practice, the variable costs may be lower than for firms that currently require less lead auditor involvement. The variable costs are also likely to be affected by the nature of the engagement, including the extent of involvement of other auditors (*e.g.,* the number of other auditors used and the amount of time spent by other auditors), and the level of risk associated with the audit work performed by other auditors. Finally, the total variable costs are related to the number of audits using other auditors.

Since the total fixed and variable costs of the amendments likely depend on the interaction of all the factors discussed above, it is not clear whether these costs, as a percentage of total audit costs, will be greater for larger or for smaller accounting firms.

For audits in which the lead auditor divides responsibility for the audit with another accounting firm, the anticipated impact of the amendments on the lead auditor's costs is not likely to be significant. Currently, about 40 audits per year involve divided responsibility, and the amendments to PCAOB

[311] *See* 2016 Proposal at 37 note 78.

[312] *See* paragraphs .09–.24 of AS 1301, Communications with Audit Committees.

[313] *See* 2016 Proposal at 38.

[314] The 2016 Proposal also mentioned the potential additional costs incurred by traveling to a company's locations or business units at which audit procedures are to be performed. *See* 2016 Proposal at 38. As remote work and virtual meetings became more common in recent years, these costs may be less significant.

standards that apply to those scenarios are not as significant as other amendments.

In addition to auditors, companies being audited may also incur costs related to the amendments, both directly and indirectly. Companies could incur direct costs from engaging with or otherwise supporting the auditor performing the audit. For example, some companies could face costs of producing documents and responding to additional auditor requests for audit evidence, due to more rigorous evaluation of audit evidence by lead and other auditors. To the extent that auditors incur higher costs to implement the amendments and are able to pass on at least part of the increased costs through an increase in audit fees, companies could incur an indirect cost.[315]

In response to the 2016 Proposal, one commenter agreed that the incremental cost due to the 2016 Proposal is likely to be limited because some accounting firms already had implemented many aspects of the 2016 Proposal in their methodology and/or in practice, and because of the risk-based approach taken in the 2016 Proposal. Another commenter stated that audit firms not already complying with the requirements would experience higher costs, but most firms already performed audits under GAAS standards, and for them the increased costs would not be prohibitive. In response to the 2021 SRC, two commenters described potential increased costs when the lead auditor and other auditor are part of the same network. The commenters suggested that the potential increased costs would be caused by the inability to sufficiently leverage common systems of quality control, resulting in unnecessary effort to understand the other auditor's audit procedures. As discussed in the 2017 and 2021 SRCs, however, affiliation through a network does not automatically provide the lead auditor with an understanding of the other affiliates' processes and experience.[316] One commenter recommended the PCAOB consider the difficulties encountered and resources used by firms in complying with PCAOB standards, AICPA AU-Cs, and IAASB ISAs. The Board's considerations are discussed below.

Potential Unintended Consequences

In addition to the benefits and costs discussed above, the amendments could have unintended economic impacts. The 2016 Proposal described a number of potential unintended consequences, resulting in public comments on those topics and others. This section discusses the potential unintended consequences as well as the Board's consideration of such consequences in adopting the amendments.[317] The discussion also addresses, where applicable, factors that mitigate the potential consequences, including revisions to the proposed amendments reflected in the amendments the Board is adopting and the existence of other countervailing factors.

Accountability of Other Auditors

Unlike AS 1205, AS 1201 does not contain a statement that ''the other auditor remains responsible for the performance of his own work and for his own report.'' Thus, it is possible that the other auditor could feel less accountable given that the amendments focus the responsibility for providing direction and supervision of the other auditor on the lead auditor. If this occurred, audit quality could decrease.

Commenters expressed differing views on the 2016 Proposal's potential impact on other auditors' accountability. Several commenters stated that the proposed amendments would not diminish other auditors' overall accountability. Other commenters stated that if the amendments are applied correctly, the lead auditor's supervision should hold the other auditors to a higher level of overall accountability and improve the overall quality of other auditors' work.

Other commenters expressed concern that the 2016 Proposal did not include the statement in AS 1205.03 about other auditors' responsibility. Omitting this provision, in their view, may be interpreted as a reduction in the responsibility and accountability of other auditors, which could have adverse effects on audit quality. Some commenters recommended retaining the existing provision or including an analogous requirement to address the other auditors' responsibility.

To mitigate this potential negative consequence, AS 1015 is being amended to emphasize that the other auditors are responsible for performing their work with due professional care.[318] This amendment was proposed in the 2017 SRC and supported by commenters. Notably, under the amended standards, the other auditor remains responsible for performing its assigned work with due professional care and otherwise in conformance with PCAOB standards. This responsibility is reflected in the auditor documentation the other auditor must prepare regarding the work performed, including written affirmation to the lead auditor regarding whether the other auditor performed its work in accordance with the lead auditor's instructions, including applicable PCAOB standards. In addition, the other auditor's work is subject to greater oversight by the lead auditor under the amended standards, which will reduce the other auditor's opportunities for performing insufficient work without detection. Finally, the other auditor's work continues to be subject to PCAOB oversight activities due to its participation in the audit.

Time of Lead Auditor

Because lead auditor personnel will be required to perform additional supervisory responsibilities, such team members might have less time to perform other work on the same engagement. This could potentially reduce the likelihood that the auditor detects material misstatements in the portion of the financial statements for which the lead auditor performs procedures and could potentially lead to inefficient allocation of audit resources. Several commenters on the 2016 Proposal agreed that this potential unintended consequence could arise, adding that the increased planning and supervisory effort required of the lead auditor could also leave less time for the lead auditor to consider important issues.

The Board's inclusion of risk-based supervision requirements in the amended standards is intended to mitigate the possibility that the lead auditor will neglect work it intends to perform because of the attention it devotes to other auditors. In particular, the additional supervisory procedures required for the lead auditor's supervision of work performed by other auditors are intended to provide the lead auditor with a basis for concluding whether the financial statements are free of material misstatement. Thus, under the amended standards, the lead auditor

[315] *See* 2016 Proposal at 40 note 80.

[316] *See* 2017 SRC at 14; 2021 SRC at 24.

[317] In addition to the potential unintended consequences discussed in this section, potential results of certain other aspects of the proposed amendments were described by some commenters as ''unintended.'' These and other comments are discussed in elsewhere in this release in conjunction with the following aspects of the final amendments: the sufficiency-of-participation determination for serving as the lead auditor; other auditors' compliance with independence and ethics requirements; other auditors' knowledge, skill, and ability; informing other auditors of their responsibilities; directing other auditors to perform certain supervisory procedures in a multi-tiered audit; and dividing responsibility for the audit.

[318] The PCAOB's underlying standards governing the work of other auditors and referred-to auditors will similarly continue to apply to their work.

should be focusing its efforts on audit areas with the greatest risk of material misstatement to the financial statements, whether those areas are audited by the lead auditor directly or by an other auditor under the lead auditor's supervision. Further, as lead auditor personnel gain experience and become more efficient in applying the new requirements related to other auditors, the likelihood that the lead auditor misallocates its time and resources should decrease.

Involvement by Other Auditors

In response to (i) the potential costs or any practical difficulties of supervising other auditors under the amended standards or (ii) the sufficiency-of-participation requirements, the lead auditor, in some circumstances, may decrease the share of work performed by other auditors and increase the share of its own work. While this may be an efficient and effective response in certain circumstances, limiting other auditors' involvement in the engagement may negatively affect audit quality to the extent the other auditors possess knowledge of important country-specific information. Two commenters on the 2016 Proposal agreed that this unintended consequence may arise.

This potential outcome, however, would be contrary to the following requirements in PCAOB standards:

- ''Engagement team members should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining.'' [319]
- ''The knowledge, skill, and ability of engagement team members with significant engagement responsibilities should be commensurate with the assessed risks of material misstatement.'' [320]
- Firms are required to have policies and procedures in place that provide reasonable assurance that the firm will undertake ''only those engagements that the firm can reasonably expect to be completed with professional competence.'' [321]

In addition, legal restrictions in some countries that prohibit a foreign auditor from providing professional services in the country could limit a foreign lead auditor's ability to take on more work and assign less work to other auditors in the country. The Board anticipates that lead auditors will find the appropriate balance between the lead auditor and other auditor involvement in the audit as accounting firms gain experience in implementing the new requirements and seek to maximize the effectiveness and efficiency of audit engagements.

Occurrence of Divided Responsibility

Some auditors who currently use an other auditor's work under AS 1205 may view compliance with the supervision requirements of AS 1201 (as amended) as too costly and decide instead to divide responsibility for the audit. Several commenters on the 2016 Proposal agreed that this unintended consequence may arise, although some of them added that the likelihood was low. There are limited research findings available regarding the division of responsibility,[322] and it is not clear how an increase in audits with divided responsibility would affect audit quality. To provide transparency about such situations, the amendments require that, in a divided-responsibility scenario, the lead auditor disclose in its audit report: (i) the part of the audit that is performed by another accounting firm; (ii) the magnitude of the portion of the company's financial statements audited by the referred-to auditor; (iii) the referred-to auditor's name; and (iv) which auditor (lead or referred-to) has audited the conversion adjustments when the financial statements of the company and its business unit are prepared using different financial reporting frameworks.[323]

Impact on Smaller Firms

The amendments will likely have an economic impact on audits performed by smaller firms that use other auditors. This is because smaller firms (i) are less likely to perform today the procedures described in the amendments and (ii) generally lack the economies of scale to distribute the additional fixed costs over many audits.[324] The 2016 Proposal also noted that additional supervisory requirements could decrease competition in the audit market for audits involving other auditors if smaller firms are less able to compete with larger firms.[325]

Several commenters on the 2016 Proposal agreed that this unintended consequence may arise. One commenter stated that, for smaller firms, complying with the proposed supervisory responsibilities may increase costs to such an extent that some smaller firms may exit the market for audits involving other auditors. Another commenter said that it would be harder for smaller firms than for larger firms to meet the proposed threshold for serving as lead auditor.

However, as discussed above, staff analysis using Form AP data shows that smaller firms already perform relatively fewer audits that involve other accounting firms than larger firms, and when they do, they use fewer other accounting firms.[326] Thus, any impact on competition in the overall audit market is likely to be relatively small.

The Board's risk-based and scalable approach to designing the amendments is also intended to maintain a level playing field for all auditors choosing to involve other auditors in their audit, regardless of their size. Scalability is a characteristic of policy that typically refers to circumstances where requirements are general enough (*e.g.,* principles-based) to be adapted effectively and efficiently under different facts and circumstances. Risk-based requirements are usually scalable because the necessary level of audit effort varies depending on the level of complexity and risk. Thus, risk-based requirements are likely to be relatively efficient (or at least not inefficient), because the auditor's incentives and discretion are likely to result in costs being incurred primarily in circumstances involving a corresponding, and potentially larger, risk-mitigation benefit to investors.[327] Under the amendments, the lead auditor would be required to determine the extent of supervision of other auditors based on, among other things, the nature of work, and risk of material misstatement.

Benefit From Additional Requirements

It is possible that some audits (*e.g.,* those previously conducted under AS 1205) will not benefit from the new requirements. This could occur, for example, on very simple low-risk audits that involve highly qualified other auditors. In such circumstances, the

[319] AS 1015.06.

[320] Paragraph .05a of AS 2301, The Auditor's Responses to the Risks of Material Misstatement.

[321] Paragraph .15a of QC 20, System of Quality Control for a CPA Firm's Accounting and Auditing Practice.

[322] *See* 2016 Proposal at 42 and note 84; *see also* Juan Mao, Michael Ettredge, and Mary Stone, *Group Audits: Are Audit Quality and Price Associated with the Lead Auditor's Decision to Accept Responsibility?,* 39(2) Journal of Accounting and Public Policy 1 (2020) (examining whether a lead auditor's disclosure of its choice to accept or decline (*i.e.,* divide) responsibility for the work of another firm is associated with differences in audit fees or audit quality, and finding that ''[l]ead auditors accepting responsibility charge higher audit fees but provide audits of no higher quality, and possibly of even lower quality'').

[323] *See* paragraphs AS 1206.06d and .08. Rule 2–05 of Regulation S–X, 17 CFR 210.2–05, includes requirements regarding filing the referred-to auditor's report with the SEC.

[324] *See* discussion above.

[325] *See* 2016 Proposal at 43.

[326] *See* Figures 2 and 3 above.

[327] *See* 2017 SRC at 40.

lead auditor could incur incremental costs to comply with the additional planning and supervisory requirements in the amended standards without yielding a corresponding benefit to audit quality.

This inefficient outcome is mitigated by the risk-based and scalable aspects of the amended standards, which rely on the lead auditor to make judgments about the nature and extent of supervision of other auditors based on risks. The Board anticipates that as lead auditors gain experience implementing the new requirements, they will make appropriate judgments that are efficient and effective at achieving the desired level of audit quality. The Board received no comments on this potential unintended consequence described in the 2016 Proposal.

Alternatives Considered

The development of this rulemaking involved the consideration of a number of alternative approaches to address the problems described above. This section explains (i) why standard setting is preferable to other policy-making approaches, such as providing interpretive guidance or enhancing inspection or enforcement efforts; (ii) other standard-setting approaches that were considered; and (iii) key policy choices made by the Board in determining the details of the standard-setting approach in this rulemaking.

Why Standard Setting Is Preferable to Other Policy-Making Approaches

The Board's policy tools include alternatives to standard setting, such as issuing additional interpretive guidance or an increased focus on inspections or enforcement of existing standards. The Board considered whether providing guidance or increasing inspection or enforcement efforts would be effective corrective mechanisms to address concerns with the supervision of other auditors and the sources of information asymmetry discussed above. The Board concluded that interpretive guidance, inspections, or enforcement actions alone would be less effective in achieving the Board's objectives than in combination with amending the auditing standards. Interpretive guidance inherently provides additional information about existing standards. Inspections and enforcement actions take place after insufficient audit performance (and potential investor harm) has occurred. Devoting additional resources to guidance, inspections, and enforcement activities without improving the relevant performance requirements for auditors would, at best, focus auditors' performance on existing standards and would not gain the benefits associated with improving the standards. Two commenters expressed support for an approach that includes standard setting.[328] The Board's approach reflects its conclusion that standard setting is needed to fully achieve the benefits resulting from improvement in audits involving multiple auditors.

Other Standard-Setting Alternatives Considered

The Board also considered certain standard-setting approaches, including: (i) retaining the existing framework but requiring the lead auditor to disclose which standard (AS 1201 or AS 1205) governs the relationship between the lead auditor and other auditors; (ii) amending AS 1205 or extending the approach in that standard to cover all arrangements involving other auditors and referred-to auditors; (iii) developing a new standard, in addition to the Board's risk assessment standards, that would address all arrangements with other auditors and referred-to auditors; or (iv) amending existing standards to address the oversight of multi-location audit engagements generally (including multi-location engagements performed by a single firm), in addition to amending the standards to address the auditor's use of other auditors and referred-to auditors.

Disclosing Which Standard Applies Under Existing Framework

The Board considered but is not adopting a requirement that the lead auditor disclose, in the audit report or elsewhere, whether the lead auditor applied AS 1205 or AS 1201 in its oversight of the other auditor. Such a disclosure approach would not achieve the benefits of applying AS 1201 (as amended) to all audits that involve other auditors, and inconsistencies between firms in their approaches to the oversight of other auditors would remain.

From an economic perspective, it is more efficient and effective to address the reasons for change described above by amending existing auditing standards on supervision than by disclosing which standard applies. The amendments directly address the lead auditor's incentives, whereas disclosing which one of the standards (before the amendments) applies would do so indirectly at best. For disclosure to sufficiently change the lead auditor's incentives, investors would need to apply significant market pressure on auditors to improve their supervisory procedures beyond requirements in PCAOB standards (before the amendments). This approach seems unlikely given the wide dispersion of share ownership among investors and the costs of engaging in collective action.

Amending AS 1205

The Board considered, but is not adopting, two alternative approaches that would amend rather than rescind AS 1205. The first approach would have amended AS 1205 to strengthen its oversight requirements but otherwise retained the existing two-standard framework in which an engagement involving other auditors could be governed by either AS 1205 or AS 1201, depending on the circumstances of the engagement. The second approach would have amended AS 1205 to extend its application to all arrangements involving other auditors and referred-to auditors such that AS 1201 would no longer apply.

The Board determined that the risk-based supervision approach in AS 1201 promotes a more appropriate involvement by the lead auditor than the approach in AS 1205. The supervisory approach in AS 1201 requires that the level of supervision be commensurate with the associated risks, and that would apply to the supervision of the other auditors' work. From an economic perspective, the risk-based approach, which is now a well-established and understood auditing practice, requires the lead auditor to take into account the facts and circumstances of an audit engagement to inform a variety of resource allocation decisions, including the nature, timing, and extent of its supervision of other auditors. This approach enables the lead auditor to better align its supervisory effort with the level of risk, focusing more attention on the riskiest areas of the audit and thus provide more risk mitigation benefit to investors. Similarly, the other auditors' communication of important and relevant information to the lead auditor allows the lead auditor to make better-informed decisions regarding the work of the other auditor.

In contrast, AS 1205 employs an approach that allows the lead auditor to use the work of other auditors based on the performance of certain limited procedures that are not explicitly required to be tailored for the associated

[328] These commenters also suggested improving the practicability of proposed requirements by allowing the lead auditor to seek assistance from other auditors in supervising the audit to a greater extent than the Board proposed. In response to these and other comments, the Board made a number of changes in the 2021 SRC to address the practicability concern, including in connection with multi-tiered audits.

risks. Thus, the approach of AS 1205 would not address the problems described in this release as effectively as the supervisory approach of AS 1201.

Developing a New Standard for All Arrangements with Other Auditors and Referred-to Auditors

The Board also considered developing a new, separate standard to govern all arrangements with other auditors and referred-to auditors. In that regard, some commenters suggested the PCAOB align a new standard with the relevant standards of other standard setters such as the IAASB. Although the IAASB has a separate standard for group audits, ISA 600, the Board believes that adopting a separate standard in its auditing standards is not necessary for most audits in which the lead auditor uses the work of other auditors. (The Board is, however, adopting a separate standard, AS 1206, to govern divided-responsibility audits, which are relatively uncommon.) Specifically, the existing standard on supervision, AS 1201, which is integrated with the Board's other risk assessment standards, already includes principles-based requirements that apply to audits involving other auditors in situations not covered by AS 1205.

Extending the requirements of AS 1201 to all situations involving other auditors and adding to AS 1201 more specific requirements for supervising the other auditor's work is a more efficient way to incorporate these requirements into the existing framework of PCAOB auditing standards. In addition, as discussed above, some commenters supported the Board's objective of establishing requirements for using other auditors' work that are risk-based and more closely aligned with the Board's risk assessment standards than existing standards. Accordingly, this rulemaking takes an integrated approach that involves enhancing the existing standard through targeted amendments that impose certain requirements on the lead auditor, rather than creating an entirely new standard.

Amending To Address Oversight of Multi-Location Engagements

The Board considered, but is not adopting, amendments to existing standards that would apply to oversight of multi-location audit engagements generally (including multi-location engagements performed by a single firm), in addition to amendments that apply to the auditor's use of other auditors and referred-to auditors. The Board is not adopting such amendments because existing PCAOB auditing standards already specifically address multi-location engagements.[329] Additional requirements for these audits, along with requirements for supervising other auditors, could create unnecessary complexity and redundancy with existing requirements. Finally, the Board through its oversight has seen less cause for concern regarding single-firm multi-location engagements compared to audits involving other auditors.

Key Policy Choices

Given a preference for amending AS 1201, the Board considered different approaches to addressing key policy issues.

Sufficiency of the Lead Auditor's Participation

To increase the likelihood that a lead auditor is meaningfully involved in the audit, the amendments require that the lead auditor determine the sufficiency of its participation in each audit that involves other auditors or referred-to auditors.[330] Sufficient participation by the lead auditor is required so that the work of all audit participants is properly planned and supervised, the results of the work are properly evaluated, and the lead auditor is in a position to conclude that the financial statements are presented fairly in all material respects. In evaluating the alternative approaches, the Board weighed the practical implications of specific criteria or conditions on the efficiency and effectiveness of the audit. The Board also evaluated, among other things, relevant information from its oversight activities and views from Standing Advisory Group (SAG) members.[331]

The requirement for determining sufficiency of participation which the Board is adopting is based on the following criteria: (i) the importance of the locations or business units for which the engagement partner's firm performs audit procedures in relation to the financial statements as a whole, considering quantitative and qualitative factors; (ii) the risks of material misstatement associated with the portion of the financial statements audited by the engagement partner's firm in comparison with the other auditors' or referred-to auditors' portions; and (iii) the extent of the engagement partner's firm's supervision of the other auditors' work. The second consideration is aligned with the principle of determining the scope of work in a multi-location audit, as both take into account the risk associated with the respective locations or business units. The first and third considerations cover specific situations that may arise in audits involving other auditors or referred-to auditors, where applicable; these considerations address concerns about the practicability of the proposed requirements that were expressed by some commenters on the 2016 Proposal, the 2017 SRC, and the 2021 SRC.

The Board considered prescribing additional considerations for determining sufficiency of participation based on the location of the company's principal assets, principal operations, and corporate offices. Such additional considerations were not adopted because the considerations in the final amendments already encompass them to the extent they reflect the importance of the location or pose risks of material misstatement to be addressed in the audit. Moreover, as further discussed in this release, the Board is concerned that adding more considerations could increase the risk that the firm issuing the auditor's report would not meaningfully participate in the audit, and thus would be the ''lead auditor'' in name only.

Lead Auditor's Supervisory Requirements

When other auditors are involved in an audit, the Board considered whether the lead auditor (which includes the engagement partner and other supervisory personnel of the firm issuing the audit report) should be specifically required to perform certain supervisory procedures, and what the scope of any such procedures should be. PCAOB standards allow the engagement partner to seek assistance from appropriate engagement team members in fulfilling his or her supervisory responsibilities, but the standards for supervision (without the amendments) do not specify which supervisory procedures must be performed by the lead auditor.

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[329] Requirements for multi-location engagements are specifically addressed in risk assessment standards adopted by the Board in 2010 and in certain other standards. *See, e.g.,* AS 2101; AS 2105, *Consideration of Materiality in Planning and Performing an Audit;* AS 2110, *Identifying and Assessing Risks of Material Misstatement;* AS 2301. *See also* AS 2401, *Consideration of Fraud in a Financial Statement Audit;* Paragraphs A60–A67 of AS 1215, Appendix A: Background and Basis for Conclusions; AS 6115, *Reporting on Whether a Previously Reported Material Weakness Continues to Exist.*

[330] *See* paragraphs .06A–.06C of AS 2101.

[331] *See* SAG Meeting Archive (May 18, 2016; Dec. 1, 2016; May 24, 2017; Nov. 30, 2017), available at *https://pcaobus.org/about/advisory-groups/archive-advisory/standing-advisory-group/sagmeeting archive.* Transcripts of the relevant portions of SAG meetings related to this project are available in the docket for this rulemaking on the PCAOB's website (*https://pcaobus.org/Rulemaking/Pages/Docket042.aspx*).

In many audits, engagement partners seek assistance in fulfilling their supervisory responsibilities from engagement team members at other accounting firms that participate in the audit. By increasing the lead auditor's monitoring responsibilities, the supervisory procedures for the lead auditor that are described in the amendments should enhance the ability of the lead auditor to prevent or detect deficiencies in the work of other auditors and facilitate improvements in the quality of the work of other auditors. Thus, these amendments aim to change auditor behavior by strengthening the incentives of the lead auditor and therefore addressing the information and incentive problems discussed above.

The Board considered, but is not adopting, a requirement that the lead auditor obtain an understanding of the qualifications of all engagement team members outside the lead auditor's firm. Instead, the amended standards require that the lead auditor obtain an understanding of the knowledge, skill, and ability of the other auditor's engagement team members who assist the engagement partner with planning or supervision.[332] Further, in response to comments on the proposed requirements, the amendments provide that in audits involving multiple tiers of other auditors, the lead auditor may seek assistance from the first other auditor in performing this procedure with respect to the second other auditor.[333] The requirement the Board is adopting is designed to result in a more effective allocation of audit resources by focusing the lead auditor's efforts on the engagement team members outside the firm with whom the lead auditor primarily communicates and who are responsible for planning or supervising the work performed by other engagement team members.

The Board also considered, but is not adopting, a requirement that the lead auditor determine the nature, timing, and extent of audit procedures to be performed by the other auditors. Instead, the amended standards require that the lead auditor determine the scope of the work of other auditors and review the other auditors' written description of audit procedures to be performed pursuant to the scope of work requested. The amended standards also require that the lead auditor determine whether there are any changes necessary to the procedures and discuss the changes with, and communicate them in writing to, other auditors. This approach is more effective because the lead auditor generally has better visibility of the entire audit, and the other auditors generally have more detailed information than the lead auditor about audit areas in which they are involved.

Special Considerations for Audits of Emerging Growth Companies

Pursuant to Section 104 of the Jumpstart Our Business Startups (''JOBS'') Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of emerging growth companies (*i.e.,* EGCs), as defined in Section 3(a)(80) of the Securities Exchange Act of 1934, unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [334] As a result of the JOBS Act, the rules and related amendments to PCAOB standards that the Board adopts are generally subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

The proposing releases sought comment, including any available empirical data, on how the proposed amendments to the auditing standards would affect EGCs, and whether they would protect investors and promote efficiency, competition, and capital formation.[335] Commenters generally supported applying the proposed requirements to audits of EGCs. One noted the increased risks associated with EGCs and that applying the amendments to EGC audits could help to address those risks. Others emphasized that consistent requirements should apply for similar situations encountered in any audit of a company, whether that company is an EGC or not. One commenter on the 2021 SRC agreed with the Board's statements that the benefits to audit quality through improved planning and supervision may be especially significant for EGC audits, and that the amendments could contribute to an increase in the credibility of EGCs' financial reporting.

To inform consideration of the application of auditing standards to audits of EGCs, PCAOB staff prepares a white paper annually that provides general information about characteristics of EGCs.[336] As of the November 15, 2020 measurement date, PCAOB staff identified 1,940 companies that self-identified with the SEC as EGCs and filed audited financial statements in the 18 months preceding the measurement date.[337]

Analysis of Form AP filings in 2021 indicates that audits of EGCs are less likely to involve other accounting firms (*i.e.,* other auditors and referred-to auditors) compared to the broader population of issuer audits. For example, as shown in Figure 6, only 14 percent of audits of EGCs involved other firms compared to 27 percent of issuer audits overall.[338] Thus, because the use of other firms is less prevalent in audits of EGCs than in audits of non-EGCs, audits of EGCs generally are less likely than those of non-EGCs to be affected by the amendments.

[332] *See* AS 1015.06 and AS 2101.06Ha, according to which ''[e]ngagement team members should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability . . . .'' This provision is discussed in more detail above in this release.

[333] This provision is discussed in more detail above in relation to ''multi-tiered audits'' in this release.

[334] *See* Public Law 112–106 (Apr. 5, 2012). *See* Section 103(a)(3)(C) of Sarbanes-Oxley, 15 U.S.C. 7213(a)(3)(C), as added by Section 104 of the JOBS Act also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The amendments do not fall within either of these two categories.

[335] *See* 2016 Proposal at 51; 2017 SRC at 43; 2021 SRC at 66.

[336] For the most recent EGC report, see *Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2020* (Jan. 24, 2022), available at *https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/economicandriskanalysis/projectsother/documents/white-paper-on-characteristics-of-emerging-growth-companies-at-november-15-2020.pdf?sfvrsn=ee0e6910_3*.

[337] *See id.* at 1. Approximately 97 percent of EGCs were audited by accounting firms that also audit issuers that are not EGCs, and 40 percent of EGC filers were audited by firms that were subject to inspection on an annual basis by the PCAOB because they issued audit reports for more than 100 issuers in the year preceding the measurement date. *See id.* at 16, 20. As of the November 15, 2021 measurement date, PCAOB staff identified approximately 3,100 companies that self-identified with the SEC as EGCs and filed audited financial statements in the 18 months preceding the measurement date. The increase from 2020 to 2021 is, in large part, driven by special purpose acquisition companies. Special purpose acquisition company audits rarely involve the participation of other auditors.

[338] The analysis of Form AP data presented in Figure 6 is limited to issuers other than investment company vehicles and employee benefit plans.

Figure 6. Comparison of the Use of Other Auditors in Audits of EGCs and Issuers Overall (2021)

	Audits of EGCs	Audits of issuers overall*
Percentage of issuer audits that use other auditors	14%	26%
Percentage of audits involving other auditors where:		
2 or more other auditors were involved	35%	61%
5 or more other auditors were involved	5%	28%
Percentage of audits involving other auditors where:		
Other auditors performed 10% or more of total audit hours	40%	52%
Other auditors performed 30% or more of total audit hours	17%	19%

Source: 2021 Form AP data obtained from PCAOB's AuditorSearch database.

Note: The term "other auditors" as used in this table includes referred-to auditors and refers only to other accounting firms and not individual accountants at those firms.

Audits of EGCs that do involve other accounting firms are also likely to involve fewer other firms than those of issuers overall. For example, as shown in Figure 6, in audits involving other accounting firms, EGC audits involve two or more other firms in about 35 percent of audits compared to about 61 percent of audits of issuers overall. The difference is more pronounced when considering the use of several other firms, where only about five percent of EGC audits involving other firms involve five or more other firms in contrast to about 28 percent of issuer audits overall.

A comparison of the share of total audit hours performed by other accounting firms shows a more modest difference between EGC audits and issuer audits overall. Measured by the share of total audit hours performed by other accounting firms, the role of other firms on EGC audits is less substantial compared to their role on audits of issuers overall. For example, as shown in Figure 6, other accounting firms perform 10 percent or more of the audit hours in about 40 percent of audits of EGCs compared to about 52 percent of audits of issuers overall. Other accounting firms perform 30 percent or more of the audit hours in about 17 percent of audits of EGCs and about 19 percent of audits of issuers overall.

These statistics suggest that, when compared to issuer audits overall, audits of EGCs are less likely to involve the use of other firms and, even when they do, they typically involve fewer other firms and those other firms account for a smaller share of total audit hours.

For individual EGC audits involving other firms, the economic impacts of the amendments may be more or less significant depending on the facts and circumstances of a particular audit. In addition to the extent of involvement of other firms, the benefits and costs also depend on the level of risk associated with the audit work performed by other firms, the current methodologies, and the ability to distribute implementation costs across engagements. EGCs are likely to be newer companies, which may increase the importance to investors of the external audit to enhance the credibility of management disclosures.[339] All else equal, the benefits of the higher audit quality resulting from the amendments may be larger for EGCs than for non-EGCs. In particular, because investors who face uncertainty about the reliability of a company's financial statements may require a larger risk premium that increases the cost of capital to companies, the improved audit quality resulting from applying the new amendments to EGC audits involving other firms could reduce the cost of capital to those EGCs.[340] Moreover, because of the scalability of the risk-based requirements, the costs of performing the procedures are unlikely to be disproportionate to the benefits of the procedures. Overall, the amendments are expected to enhance audit quality and contribute to an increase in the credibility of financial reporting by EGCs.

For the reasons explained above, the Board believes that the amendments are in the public interest and, after considering the protection of investors and the promotion of efficiency, competition, and capital formation, recommends that the amendments should apply to audits of EGCs. Accordingly, the Board recommends that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection

[339] Researchers have developed a number of proxies that are thought to be correlated with information asymmetry, including small issuer size, lower analyst coverage, larger insider holdings, and higher research and development costs. To the extent that EGCs exhibit one or more of these properties, there may be a greater degree of information asymmetry for EGCs than for the broader population of companies, which increases the importance to investors of the external audit to enhance the credibility of management disclosures. *See* 2021 SRC at 65 notes 181 and 182.

[340] *See* 2021 SRC at 65 note 183.

of investors and whether the action will promote efficiency, competition, and capital formation, to apply the amendments to audits of EGCs. The Board stated its readiness to assist the Commission in considering any comments the Commission receives on these matters during the Commission's public comment process.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) by order approve or disapprove such proposed rules; or

(B) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/regulatory-actions/how-to-submit-comments*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2022–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. 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. All submissions should refer to File Number PCAOB–2022–01 and should be submitted on or before July 22, 2022.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[341]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–13983 Filed 6–30–22; 8:45 am]

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[341] 17 CFR 200.30–11(b)(1) and (3).

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